

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION

4 UNITED STATES OF AMERICA,

5 Plaintiff,

DOCKET NO. 1:06-cr-44

6 vs.

7 MICHAEL WAYNE HESHELMAN,

8 Defendant.

9 _____/

10
11 VOLUME V

12 TRANSCRIPT OF JURY TRIAL

13 BEFORE THE HONORABLE JANET T. NEFF

14 UNITED STATES DISTRICT JUDGE

15 GRAND RAPIDS, MICHIGAN

16 June 9, 2009

17
18 Court Reporter: Glenda Trexler
19 Official Court Reporter
20 United States District Court
21 685 Federal Building
110 Michigan Street, N.W.
Grand Rapids, Michigan 49503

22 Proceedings reported by stenotype, transcript produced by
23 computer-aided transcription.
24
25

1 A P P E A R A N C E S:

2 FOR THE GOVERNMENT:

3 MR. DANIEL Y. MEKARU
4 U.S. ATTORNEY
The Law Building
330 Ionia Avenue, N.W.
5 P.O. Box 208
Grand Rapids, Michigan 49501-0208
6 Phone: (616) 456-2404
Email: Daniel.mekaru@usdoj.gov

7 FOR THE DEFENDANT:

8 MR. CHRISTOPHER E. TRACY
9 HONIGMAN, MILLER, SCHWARTZ, AND COHN, LLP
444 West Michigan Avenue
10 Kalamazoo, Michigan 49007
Phone: (269) 337-7708
11 Email: ctracy@honigman.com

12 * * * * *

13 Grand Rapids, Michigan

14 June 9, 2009

15 9:10 a.m.

16 P R O C E E D I N G S

17 (*Jury entered the courtroom at 9:09 a.m.*)

18 *THE COURT:* Good morning everybody.

19 *ALL:* Good morning.

20 *THE COURT:* Welcome back. We are now resuming trial
21 in case number 1:06-cr-44, the United States of America versus
22 Michael Wayne Heshelman.

23 Good morning, Mr. Heshelman.

24 *THE DEFENDANT:* Good morning, ma'am.

25 *THE COURT:* Mr. Mekar, are you ready?

1 MR. MEKARU: Yes, Your Honor.

2 THE COURT: Let's go.

3 MR. MEKARU: Your Honor, before we proceed with this
4 witness by video link, again I would like to inquire of the
5 defendant and confirm his waiver of any sort of Sixth Amendment
6 right to confront a witness by video link for the witness
7 Mr. Turner coming from Ontario, Canada.

8 THE COURT: Mr. Tracy, Mr. Heshelman.

9 MR. TRACY: No objection, Your Honor.

10 THE DEFENDANT: No objection.

11 THE COURT: Thank you.

12 MR. MEKARU: The government next calls Brian Turner.

13 THE CLERK: Mr. Turner, would you raise your right
14 hand, please.

15 BRIAN EDWARD TURNER

16 *(The oath was administered)*

17 THE WITNESS: I do.

18 THE CLERK: Thank you. Would you state your full
19 name for the record, please.

20 THE WITNESS: Brian Edward Turner.

21 THE COURT: Good morning, Mr. Turner. You can't see
22 me, but I'm United States District Judge Janet Neff, and we're
23 here in our courtroom in Grand Rapids, Michigan, where your
24 testimony will be seen and heard by a jury and the defendant
25 Mr. Heshelman, as well as counsel and other people who are

1 present in the courtroom this morning.

2 Mr. Mekaru.

3 MR. MEKARU: Yes, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. MEKARU:

6 Q. Mr. Turner, where do you live?

7 A. Thornhill, Ontario, Canada.

8 Q. And where are you at right now?

9 A. New Market, Ontario, Canada.

10 Q. Is that a major city that's near your home?

11 A. It is one hour north of where I live, and it is a -- in
12 the scheme of things up here, it's a regional municipality.

13 Q. Are you in a courtroom in that city?

14 A. Yes.

15 Q. Okay. And are there other people present in the courtroom
16 on your end?

17 A. Yes.

18 Q. Okay. Now, Mr. Turner, could you give us a little bit
19 about your background. How are you employed?

20 A. I'm not. I've been self-employed all my life. I'm a
21 chartered accountant or a CPA by United States designations,
22 and I operated in public practice for 25 years.

23 Subsequent to that I did real estate development work
24 until I retired.

25 Q. Have you been involved in a number or series of

1 investments, either personally or through your business
2 activities?

3 A. Um, no. There have been some, but not a number.

4 Q. Well, what -- could you give us some sort of idea about
5 what you indicate would be some investments.

6 A. When I was developing and we had excess cash, we would
7 place it in CDs and things like that.

8 Q. So you've had some -- I gather you've had some success
9 either professionally as a CPA or an accountant and some
10 success in doing development work, so did there come a point
11 where you had some money that was available for investing or
12 some investment opportunity?

13 A. Yes.

14 Q. And then at some point were you either approached or did
15 you come in contact with a man by the name of
16 Michael Heshelman?

17 A. Yes.

18 Q. Could you explain for us how it is that you came in
19 contact with Mr. Heshelman?

20 A. I wish I could remember, but I don't. Mr. Heshelman
21 contacted me, but I didn't know Mr. Heshelman for any period of
22 time or prior to his contacting me.

23 Q. What was the nature of his communication with you?

24 A. Mr. Heshelman was hosting or perhaps promoting a
25 high-yield investment style of program and wanted to know if we

1 wanted to participate. And he did that on several occasions.

2 Q. You say did that. He presented this to you and spoke to
3 you on several occasions?

4 A. Well, he presented different things. I don't think it's
5 fair to characterize it as presenting a single proposal. He
6 presented several. If I recall properly, it was different
7 proposals.

8 Q. All right. And was there anything in common with these
9 proposals that he was presenting?

10 A. Yes, the projected returns were unusually high in all
11 cases.

12 Q. Now, did you ever meet with Mr. Heshelman in person?

13 A. Not that I can remember.

14 Q. So your communication with Mr. Heshelman, was it all
15 through the phone or was there any sort of correspondence?

16 A. I only remember telephone conversations.

17 Q. Did he ever send you any documents or any sort of
18 contracts or anything along those lines?

19 A. He might have, but not that I remember.

20 Q. Okay. Well, based upon Mr. Heshelman's presentation to
21 you, either about one investment opportunity or a series, did
22 you decide to at least pursue this possibility a little
23 further?

24 A. Yes. I think your choice of words is good: To pursue it.
25 We reserved judgment on whether or not we would actually

1 participate in it.

2 Q. Okay. Because I think in your mind, as I gather, that you
3 really didn't invest with him, but you did send him some money
4 with the possibility that might be invested if something
5 presented itself; would that be a fair way to characterize it?

6 A. That's correct.

7 Q. And let me back up a little bit. Were you operating a
8 company by the name of Thornbrook International?

9 A. Yes, sir.

10 Q. So let me see if I understand this. At some point did
11 you, or through your company Thornbrook International, did you
12 send some money to Mr. Heshelman?

13 A. Yes, sir.

14 Q. And could you describe for us, as best you can recall, the
15 transaction itself, what was involved in sending the money to
16 Mr. Heshelman?

17 A. Excuse me, can I correct that last response? We didn't
18 send it to Mr. Heshelman; we sent it to Mr. Heshelman's lawyer,
19 Mr. Warner, in trust.

20 Q. That's what I was getting at in terms of the mechanics.

21 A. Yes. Yes, sir.

22 Q. So the money, was it mailed, was there a check, or was
23 there a wire transfer of funds to Mr. Heshelman's attorney?

24 A. It was a wire transfer.

25 Q. And how much money did you -- well, because there was

1 money that you sent to Mr. Warner, and I gather there may have
2 been some deduction for a fee or a wire transfer fee. So how
3 much money did you in total send to -- intend to send to
4 Mr. Heshelman's attorney, and as best you can recall what was
5 the total amount that actually ended up in his account?

6 A. I recall it to be a million dollars.

7 Q. All right. And was this in U.S. currency or in Canadian
8 currency?

9 A. In U.S. dollars.

10 Q. Now, you have before you a series of exhibits. I'd like
11 you to turn to what's been marked as Exhibit 4B, and at the
12 bottom is a page number, page 102.

13 A. Yes, sir, I have it.

14 Q. All right. Now, the -- there are more pages that are part
15 of Exhibit 4B. I just sent you a single page of a bank
16 statement for this Florida Bar Association, Inc.,
17 Kenneth Warner Mayer -- excuse me -- Kenneth Warner, Attorney
18 at Law. Do you see that?

19 A. Yes, sir.

20 Q. Now, you had said that you had sent money to
21 Mr. Heshelman's attorney. Was Mr. Warner the attorney you
22 spoke of?

23 A. Yes, sir.

24 Q. And in the document itself you see in the detail here some
25 of the transactions. September 8th, 2000, there's an incoming

1 wire transfer of \$999,985, and below that it says, "From
2 Thornbrook International," it's abbreviated, "Inc."

3 Now, sir, is this the wire transfer you spoke of going to
4 Mr. Heshelman's attorney?

5 A. I believe it is.

6 Q. And the difference here, may I suggest, is that you
7 thought it was a million dollars. May there have been some
8 sort of fee associated with that wire transfer to reduce the
9 total amount that was ultimately deposited?

10 A. There might have been, but I don't remember.

11 Q. Okay.

12 A. It's a million dollars, and you're asking me what I
13 remember, and I remember it as being a million dollars, but I
14 wouldn't say that it's impossible that there was a -- some kind
15 of a deduction, but I don't remember.

16 Q. Okay. Now, when you sent the money to this attorney's
17 account, what was your understanding as to what would happen to
18 those funds once the money was sent there?

19 A. The funds were to sit there in trust until such time as an
20 acceptable transaction, a transaction acceptable to me was
21 presented and I approved the utilization of the funds.

22 Q. So was this money basically sitting there poised to
23 participate in some investment that was being presented in the
24 future by Mr. Heshelman?

25 A. Correct. If I thought that the -- it was an appropriate

1 thing for us to participate in.

2 Q. So was there any sort of, as far as you can recall, any
3 sort of blanket authorization on your part for Mr. Heshelman to
4 invest these monies unilaterally?

5 A. None whatsoever.

6 Q. Any sort of agreement that Mr. Heshelman could use a
7 portion of this money immediately for expenses or costs that he
8 incurred in looking for investment opportunities for you?

9 A. None whatsoever.

10 Q. So as best that you can recall, how was Mr. Heshelman
11 going to be compensated for these investments?

12 A. That remained to be seen. Whatever investment was
13 presented, there undoubtedly would be some -- some element of
14 profit sharing, but it was never presented -- an acceptable one
15 was never presented, so there -- at this stage of the game
16 there was no approval for anything but the funds to stay in
17 trust subject to our authority to proceed with something.

18 Q. Okay. So those sort of costs or expenses or compensation,
19 would those have been packaged and presented at the same time
20 as some investment opportunity that was yet to be proposed?

21 A. I didn't expect a proposal involving a series of expenses.
22 What I did expect was a proposal to share profits from any
23 acceptable transaction, and from Mr. Heshelman's share he would
24 be looking after whatever expenses he had to -- he incurred.

25 Q. All right. Once the money went into this attorney's,

1 Mr. Warner's, trust account, this attorney's account, did you
2 have any idea what happened to the money?

3 A. None whatsoever.

4 Q. And as far as you're concerned was the money just supposed
5 to stay there, or was there any option for that to be slid over
6 to any other account, again, an account being held for you?

7 A. That's the same answer as I gave you before. It was to
8 stay there.

9 Q. Okay.

10 A. The same as any lawyer's trust account would handle it.

11 Q. Now, Mr. Warner, was Mr. Warner your attorney or was he
12 Mr. Heshelman's attorney?

13 A. He was not my attorney.

14 Q. So you didn't have any sort of client relationship with
15 him. As far as the best you understood, was that relationship
16 with Mr. Heshelman?

17 A. He was not mine. That's all I can tell you. I don't know
18 what relationship he had with Mr. Heshelman. I assumed he was
19 Mr. Heshelman's attorney.

20 Q. All right.

21 A. And I may well have been told that he was --

22 Q. All right.

23 A. -- but I don't remember.

24 Q. Now, Mr. Turner, we've had a financial analyst who works
25 with the FBI go through the bank records and reduce that

1 information to a spreadsheet and produce a series of exhibits
2 for us. And the jury has gone through and seen a series of
3 these exhibits. But I just want to show you a portion of a
4 couple of exhibits. All right?

5 A. Understood.

6 Q. Okay. Now, Exhibit 4D, one page.

7 A. Yes, sir, I have it.

8 Q. It's one page.

9 A. Yes.

10 Q. Page 37 of that exhibit.

11 A. Yes, sir.

12 Q. And as I told you before, some of these exhibits are much
13 longer, and I've just presented you with a single page.

14 This summary shows the wire transfer of \$999,985 on
15 September 8th, 2000. And the detail of that transaction is on
16 another document, but that's why I showed you the monthly
17 account statement. And as you go down, there's an indication
18 here that \$1 million was transferred four days later on
19 September 12, 2000, to another account.

20 Do you see that?

21 A. Yes, I do.

22 Q. Okay. The other account and the activity in the other
23 account has been summarized in Exhibit 6C.

24 A. I have it.

25 Q. Turn to Exhibit 6C. And towards the bottom of the first

1 page, 6C, I've given you three pages of that exhibit. Do you
2 see towards the bottom on -- the transaction there on
3 September 12th, 2000, there's a deposit amount of \$1 million.

4 A. Yes, sir.

5 Q. Are you with me?

6 A. I see it.

7 Q. Good. Shortly following that deposit, September 15th,
8 beginning on September 15th, there's a series of withdrawals
9 from the account.

10 Now I'd like to go through this and see if you recognize
11 any of these names or if you authorized any of these funds to
12 be taken out of your \$1 million. All right?

13 A. Yes, sir.

14 Q. Okay. So Marie Jose Madeline Gosse Gardet, do you
15 recognize that name at all?

16 A. No, sir.

17 Q. Did you authorize that money to come out of your million
18 dollars?

19 A. No, sir.

20 Q. Bristol Plaza. Do you recognize that?

21 A. No.

22 Q. Did you have -- as an aside, did you have any idea where
23 Mr. Heshelman was living or where he was doing business from or
24 any sense at all?

25 A. I know that he had a presence, whether he was living there

1 or not I don't know, but he had a presence in Longboat Key in
2 Florida, and I think he had a presence in Michigan, but I can't
3 say that I know where he was doing business from or where he
4 was living.

5 Q. Okay. Moving back to the exhibit. There's a transfer
6 here that goes back to the other account, and we'll set that
7 aside.

8 And then there's a \$10,000 wire transfer to a
9 Dennis Mickelson. Your document has Mickelson spelled with an
10 "H," but I think it's actually spelled with a "K."

11 Do you recognize that name at all?

12 A. No, sir.

13 Q. Turning to the next page. \$10,000 going to Investors
14 First Bancorp Limited. Do you recognize that name?

15 A. No.

16 Q. \$10,000. The next line is First Bancorp Limited. Do you
17 recognize that?

18 A. No.

19 Q. Now, it's been the testimony of other witnesses that
20 Mr. Heshelman was using at various times Investors
21 First Bancorp or First Bancorp as the corporate entity of his
22 activities.

23 Does that refresh your recollection at all of any
24 association Mr. Heshelman may have had with those companies?

25 A. I've never heard of it, that name before.

1 Q. Okay. So as far as you're concerned, the transaction or
2 this opportunity you were investing -- excuse me -- considering
3 was solely with Mr. Heshelman as an individual and not through
4 some other corporation or other entity?

5 A. I believe that Mr. Heshelman represented himself, and it's
6 entirely possible that he might have presented a proposal that
7 would involve another company, but I didn't -- I never --
8 relations or communications between he and I never got to that
9 point. I have no knowledge of -- there was never a program
10 that I came close to approving for participation.

11 Q. All right. The next line is an interest deposit into that
12 account. Let's move on to the next one. \$3,000 going to
13 Mitch Miller.

14 Does that name ring a bell at all?

15 A. No, sir.

16 Q. The next line is \$5,000, again to Dennis Mickelson.
17 You've indicated your lack of knowledge of him.

18 The next line is \$5,000 to a Don E. Lee. Does that name
19 ring any bells at all? Do you know that name at all?

20 A. No, sir.

21 Q. All right. Next is \$5,000 to Orange County Teachers
22 Federal Credit Union. Do you recognize that institution at
23 all?

24 A. No, sir.

25 Q. How about the name Featherstone, Ron Featherstone or

1 Debra Featherstone?

2 A. No, sir.

3 Q. The next item is a deposit -- we'll move past that.

4 There's another item here. There's another transfer going back
5 to the other account. We'll move past that. More money going
6 to Bristol Plaza, more money for Investors First, and then
7 \$25,000 again to First Bancorp.

8 Now we have a different name, \$40,000 going to a John D.
9 Grayshan. Do you recognize that name?

10 A. No, sir.

11 Q. All right. Continuing, more to First Bancorp, another
12 transfer back to the other account, more money going to Marie
13 Gosse Gardet, Marie Jose Madeline Gosse Gardet, and then
14 \$10,000 going to Kristen Rocks.

15 Do you recognize that name at all?

16 A. No, sir.

17 Q. Continuing, more money to First Bancorp, more money to
18 Orange County Teachers Federal Credit Union, Dennis Mickelson,
19 and then \$15,000 going to Ralph Trustees Limited.

20 Any sense as to what that is?

21 A. No, sir.

22 Q. And, let's see, \$3,300 is a fund transfer. We'll move
23 past that. More interest. And then \$5,000 for a Banco
24 Del Cafe de Nicaragua. Any knowledge of that?

25 A. No, sir.

1 Q. All right. Continuing, there's a \$15,000 transaction
2 going to Olga Muzon.

3 Any knowledge of that?

4 A. No, sir.

5 Q. Another \$80,000 going to Marie Jose Madeline Gosse Gardet.
6 \$5,000 going to Donilo Monzon.

7 Any knowledge of Mr. Monzon or that individual?

8 A. No, sir.

9 Q. A transfer again going back into the account,
10 Bristol Plaza, First Bancorp, Investors First, and then there's
11 \$25,000 going to an Anthony Loiacono.

12 Do you recognize that name at all?

13 A. No, sir.

14 Q. There's another transfer and a cash withdrawal, more money
15 to Investors First, and then a Truck -- the Truck Junction,
16 Inc.

17 Any knowledge of that entity?

18 A. No, sir.

19 Q. Okay. Let's turn to the next page. Bear with me for a
20 while longer as we go through this.

21 There's a transaction here going to a Robert Tringham. I
22 don't know, there might be an extra "A" misspelled in here, but
23 I think it's Tringham. Do you recognize that name at all?

24 A. I have heard of that name. I don't know in what context,
25 but I have heard that name before.

1 Q. Was there -- as best you can recall, was there any
2 association between Mr. Heshelman and Mr. Tringham in that
3 context that you referred to?

4 A. There might have been, but I don't remember.

5 Q. All right. More money to Mitch Miller, Ralph Trustees,
6 Sharon Carlson, and then \$10,000 from a Merrill Lynch account.

7 Any knowledge of a Merrill Lynch account being opened on
8 your behalf or for your money?

9 A. No, sir.

10 Q. Debra Featherstone. We asked you about whether you knew
11 anybody by the name Featherstone. Investors First.

12 How about Erna Vanschelt, \$50,000. Any knowledge of
13 Ms. Vanschelt?

14 A. No, sir.

15 Q. All right. Additional transfers going back to the other
16 account. Mr. Tringham, Bristol Plaza, Ralph Trustees. How
17 about Arron Jepson, \$10,000. Do you know Mr. Arron Jepson?

18 A. No, sir.

19 Q. First Bancorp, Investors First, and then \$48,000 going to
20 a Bryce Sherwood. Do you know Bryce Sherwood?

21 A. No, sir.

22 Q. And then another 52,000 going to Dennis Mickelson.
23 There's a debit memo and then \$4,500 going to
24 Thornbrook International.

25 Now, this \$4,500 going back to Thornbrook International,

1 any knowledge about that transaction?

2 A. I believe that I had called for the return of the funds,
3 and for some reason the amount that came back was not the
4 million dollars. I think it was short by -- I can't remember
5 what it was short by. But that when I pressed for the return
6 of the rest of the funds, I believe this \$4,500 was sent to us.
7 It wasn't the entire amount, but it substantially eliminated
8 the shortfall.

9 Q. Okay. Because the timing of this is December 8th, 2000.
10 So in December of 2000 were you asking for the return of all
11 your money?

12 A. I believe it was prior to that. I can't remember the
13 dates, but I do remember two payments, and I seem to recall
14 that the first one was a large sum. You know, 900-plus
15 thousand dollars. And I seem to recall that there was a --
16 when I pursued the balance of it, that there was a subsequent
17 transfer. So that's the best I can do. I don't remember the
18 dates.

19 Q. Do you remember at all if there was any sort of delay
20 between your original request for the money and its actual
21 production?

22 A. There was.

23 Q. Any sense as to how long?

24 A. Yes. It was too long. But I can't -- I can't give you a
25 number of days or a number of weeks. It was -- it seems to me

1 it was at least a month, maybe longer.

2 Q. During that delay were you expressing any sort of
3 dissatisfaction to Mr. Heshelman?

4 A. Certainly.

5 Q. Were you calling him often?

6 A. Probably, but I can't remember.

7 Q. Okay. Well, sir, you don't strike me as a person who
8 would let the request for returning your money to go away
9 lightly, so is this something you think you probably pursued
10 pretty vigorously?

11 A. I think that's fair, and I'd just add to that I think I
12 probably pursued Mr. Warner just as hard.

13 Q. All right. Now, you were referring to a larger amount of
14 money that came back to you. You have before you another
15 exhibit. Why don't you turn to 5A.

16 A. Yes, sir.

17 Q. Now, I realize that you probably haven't seen 5A before or
18 in the time frame of December of 2000, but I want to ask you
19 about the transaction that's reflected in 5A. All right?

20 A. Yes, sir.

21 Q. Okay. This indicates that there was an instruction for a
22 wire transfer of \$995 -- excuse me -- \$995,985 going to
23 Thornbrook International with some banking information.

24 Does this appear to be the instruction to wire your money
25 back to you?

1 A. Well, I would expect that a document like this would have
2 to have been created in order to make that happen.

3 Yes, I -- the information on the document appears to be
4 correct in terms of the destination, the wire-to location and
5 accounts, and the amounts seem to be, if I recall -- I think
6 the amounts are right, that 995,985 plus the \$4,500,
7 substantially -- substantially a million bucks.

8 Q. Right.

9 A. So, yeah, I think -- I think that the -- no, I haven't
10 ever seen it before.

11 Second, the information -- there would have to be this
12 information provided to the bank before a wire like that could
13 happen.

14 Q. Okay. Well, I understand that. I was just -- what I was
15 asking is: Did this appear to be the return of your money, the
16 transaction reflecting the return of your money in part?

17 A. Yes. Yes.

18 Q. All right. Just a few more questions, sir.

19 We've gone through your money coming in and then what
20 happened to it once it went into the attorney trust account.

21 As far as you're concerned -- and we've stopped going
22 through this, and I think if we keep going through it, we were
23 probably close to six or seven hundred thousand dollars at that
24 point. In summary, as far as you're concerned, none of these
25 transactions that involved your money were authorized by you or

1 permitted by you; would that be fair to say?

2 A. Correct.

3 Q. And there was no provision for any sort of expenses or any
4 sort of costs to be fronted or paid out of your money and
5 directed by Mr. Heshelman; is that also true?

6 A. That's correct.

7 Q. Now, regarding the return of your funds, did you have any
8 knowledge as to where that money actually came from, the actual
9 source of that money?

10 A. I expected that it was from Mr. Warner's trust account.

11 Q. And did you --

12 A. But knowledge, I didn't know. I didn't know.

13 Q. Did you just expect that to be, again, your own money
14 being returned to you?

15 A. Yes, sir.

16 Q. Do you know a man by the name of Pastor Alan Moody?

17 A. No, sir.

18 Q. Do you have any knowledge that his money was actually
19 being sent to you?

20 A. No.

21 Q. After you had received your money back from Mr. Heshelman
22 through his attorney, Mr. Warner, did you have any further
23 contact with Mr. Heshelman?

24 A. I can't recall for certain, but I believe Mr. Heshelman
25 called me a few times. I don't believe I ever talked to him.

1 Maybe once or twice. I don't know.

2 Q. Did you ever pursue any sort of other opportunities or did
3 you ever transfer money back to him with the thought of
4 pursuing any other opportunities?

5 A. Never.

6 MR. MEKARU: Thank you, Mr. Turner.

7 Your Honor, we'll pass the witness.

8 THE COURT: Thank you, Mr. Mekar.

9 Mr. Tracy.

10 MR. TRACY: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. TRACY:

13 Q. Good morning, Mr. Turner. I'm Chris Tracy. I represent
14 Michael Heshelman. How are you today?

15 A. Fine, thank you.

16 Q. Good. So just to summarize a couple points. I think
17 we've got them, but you know how the other attorney wants to
18 asks questions too, so I apologize if a little of this is
19 slightly repetitive.

20 You or Thornbrook International invested a million
21 dollars, and I use the term "invested" sort of lightly like you
22 used it before, but you put a million dollars with
23 Michael Heshelman into Mr. Warner's account, correct?

24 A. Correct.

25 Q. And then approximately a million dollars was returned to

1 you sometime after you requested that money back, correct?

2 A. Correct.

3 Q. And your profession is much better at math than mine, but
4 I believe you got that return of monies in two sums. 995,985
5 was one of the things we looked at, correct?

6 A. Yes, sir.

7 Q. And then a follow-up transfer of \$4,500, correct?

8 A. I'm not sure about the \$4,500. I know we got a second
9 one, and it could well be. It's likely that that's right.

10 Q. Well, from the government's paperwork, that's what it's
11 reflecting. When I do the math -- but, again, you're dealing
12 with a lawyer here, so keep that in mind when you check the
13 math -- I come up with a transfer back to you between those two
14 of a 1,000,485 bucks. Does that sound about right?

15 A. That's what the numbers add up to. For some reason I
16 believe that the transfer back was short something.

17 Q. Okay.

18 A. So that's why I questioned the amount of the 4,500. But
19 we did get substantially all our funds back, and I did not
20 pursue what I recall as a shortfall. You may be right.

21 Q. Okay. Thank you, sir.

22 And then earlier when you talked to Mr. Mekaru you talked
23 a little bit about the concept of if you were going to get into
24 an investment and actually move forward with one with
25 Mr. Heshelman, these were high-yield or high-return type

1 investments, correct?

2 A. There were -- yes, "high-yield" being defined as better
3 than normal interest, bank interest income.

4 Q. Okay. So, in other words, back then -- this, of course,
5 would have been in the 2000, and then, you know, if you would
6 have moved forward, it would have gone into the 2001 period,
7 but for the 2000 period, whatever your normal bank income
8 interest rate was either in Canada or the United States at the
9 time, you were looking at receiving returns or yields higher
10 than that, correct?

11 A. Yes, sir, that's correct.

12 Q. Okay. And was it your understanding in terms of talking
13 about these concepts with Mr. Heshelman that that would involve
14 a million dollars that you or Thornbrook invested essentially
15 being pooled -- if that word is okay with you, or use a
16 different one if you'd like a different one -- with other
17 people's investments to use that to access more monies that
18 would allow higher returns? Was that your general
19 understanding?

20 A. Yes, that might have -- that might have happened.

21 Q. Okay.

22 A. The conditions of the pooling had to be acceptable to me.

23 Q. Exactly. In other words, before you were actually going
24 to go forward, you and Mr. Heshelman would either have to meet
25 or have conversation by phone to explain it in more detail, I

1 presume paperwork would have to come to you, et cetera, and you
2 would have to approve that before you moved forward?

3 A. Exactly.

4 Q. Okay. And I take it the two of you never met in person;
5 am I right about that?

6 A. I don't remember meeting in person.

7 Q. Okay. So most of your -- if you ever met in person -- the
8 reality is most of your communications happened by phone or
9 email or something along those lines?

10 A. Correct.

11 Q. Okay. Now, I believe you indicated you're retired at this
12 point, correct, sir?

13 A. Yes, sir.

14 Q. But some of your prior experience besides being a CPA or
15 an accountant also involved real estate developments, that type
16 of thing, correct?

17 A. Yes, sir.

18 Q. And did you do that both in Canada and the United States,
19 or where were those developments occurring?

20 A. Yes to the first question, and to the second question in
21 the United Kingdom.

22 Q. Okay. And did you have partners or other investors that
23 were involved with those developments with you?

24 A. Yes, sir.

25 Q. So, in other words, it wasn't just your monies involved,

1 you would get other people involved as part of that process; is
2 that correct?

3 A. I had partners. And you seem to be asking a question that
4 relates to broad solicitation. That's not the case. My
5 partners were very narrow and were -- tended to be
6 single-source funders and joint venture partners on a
7 project-by-project basis.

8 Q. Okay. I wasn't trying to go to that. I thank you for
9 clarifying that.

10 You had partners or other people that invested dollars
11 with you along with -- in these developments; is that fair to
12 say?

13 A. Yes, sir.

14 Q. And then you or attorneys on your behalf, you put together
15 these joint venture agreements, these types of things, that
16 would sort of spell out the details of how the investment was
17 going to work?

18 A. Yes, sir.

19 Q. So you were familiar, to some degree, with those types of
20 documents?

21 A. Yes, as they related to the real estate activity.

22 Q. Okay.

23 A. Very narrow.

24 Q. Okay. Were some of these projects you were involved with,
25 besides sort of direct real estate, were they also related to

1 golf courses and the like?

2 A. Yes, sir.

3 Q. And in the process of pooling these monies together, do
4 you recall whether you ever used attorneys' trust accounts or
5 that kind of thing as part of the process?

6 A. Yes, sir.

7 Q. Do you recall during the course of doing these
8 developments, over whatever years you were doing them, did you
9 ever have a partner or one of the investors you were working
10 with opt to pull out of the joint venture?

11 A. That's a long period of time, and I -- probably, but I
12 can't recall right off the top of my head.

13 Q. Fair enough. If that would have happened, and assuming it
14 did happen, I take it if someone pulled out, then part of your
15 role or the other people that you were working with, you would
16 have tried to find another partner or investor to replace that
17 person; is that right?

18 MR. MEKARU: Your Honor, I'm going to object as to
19 the relevance of all of this.

20 THE COURT: How is it relevant, Mr. Tracy?

21 MR. TRACY: Um, we have a very similar process that
22 Mr. Turner was involved with for years and years of investments
23 that he was doing that had to be sort of a similar process to
24 the type of thing that he got involved with with Mr. Heshelman.
25 I'm just exploring the witness's understanding of how the

1 process works to make sure that it's consistent with the type
2 of thing that was --

3 *THE COURT:* Well, why don't you ask the question in
4 that way rather than going around the barn to do it.

5 *MR. TRACY:* Okay.

6 Q. (BY MR. TRACY) Well, my pending question is: If you had
7 an investor or partner that had to pull out, was your plan or
8 would it be your plan with your partners you're working with
9 that you would look for somebody to replace that person?

10 *MR. MEKARU:* Your Honor, again I'm going to object.
11 This is pure speculation. He's asking this witness to go
12 through a hypothetical on something that isn't related.

13 This witness has testified he put some money into an
14 account, never invested with Mr. Heshelman because he didn't
15 present him with anything he thought was worthy of investing
16 his money, and then asked for it back.

17 *MR. TRACY:* Well, the government --

18 *THE COURT:* The objection is sustained, Mr. Tracy.
19 You really are getting way off track here and asking this
20 witness to speculate to relate to things that happened many
21 years ago that have no relationship to his dealings with
22 Mr. Heshelman.

23 *MR. TRACY:* Okay.

24 Q. (BY MR. TRACY) After you received your money back from
25 Mr. Heshelman, or perhaps even before you did that, did you

1 talk with him about any possible golf course developments down
2 in the Florida area?

3 A. I can't recall. Not likely. I wasn't working down there
4 at that time.

5 Q. Okay. Do you remember whether he spoke with you at all
6 about one in the Jacksonville, Florida, area that was maybe
7 a Ritz Carlton property? Does that refresh your recollection
8 at all?

9 A. No, it doesn't, but, you know, that could have happened,
10 but I don't remember.

11 Q. Okay. And in terms of -- Mr. Mekaru asked you about
12 contracts or agreements that you may have signed with
13 Mr. Heshelman related -- or with the company or whatever that
14 he had started up related to this transaction.

15 Do you recall ever getting a request or maybe a subpoena
16 from the U.S. government or the FBI related to getting copies
17 of those documents?

18 A. (A) I don't believe there were any documents. (B) I don't
19 recall getting a request.

20 Q. Did you keep a file on this investment at all that you
21 made?

22 A. Probably, but I can't recall.

23 Q. Okay. And at this point in time there's not any documents
24 out of that file or anything that you've turned over to
25 anybody, I take it; is that correct?

1 A. No. No. You're right.

2 MR. TRACY: Okay. Thank you very much for your time,
3 Mr. Turner. Have a good day.

4 THE COURT: Thank you, Mr. Tracy.

5 THE WITNESS: Thank you.

6 THE COURT: Any redirect, Mr. Mekaru?

7 MR. MEKARU: No, Your Honor. Thank you.

8 THE COURT: Thank you.

9 Mr. Turner, thank you very much for your time and
10 your testimony. We will terminate the video feed at this time,
11 please.

12 THE WITNESS: Thank you.

13 THE COURT: Can we just turn it off? Do we know how
14 to turn off the monitor?

15 MR. TRACY: You want a direct answer, don't you,
16 Your Honor? Don't let us touch it, please.

17 THE COURT: Or do we have to get IT down here to do
18 that?

19 MR. TRACY: Go ahead, Dan.

20 MR. MEKARU: I remember last time they thought it was
21 a little distracting.

22 THE COURT: I think we'd really like to have that
23 moved out of there, Mr. Mekaru.

24 MR. MEKARU: We'll at least have it on standby.
25 Obviously it's blocking our witness. This might be worth more

1 than I make, so I don't want to touch it.

2 *THE COURT:* Yeah, it's probably . . .

3 *MR. MEKARU:* We'll leave it.

4 *THE COURT:* Well, rather than sit here and look at
5 each other, why don't we just take a brief break until the IT
6 people can get this equipment out of here.

7 We are done with it, right?

8 *MR. MEKARU:* Yes, Your Honor. Thank you.

9 *THE COURT:* We'll take a brief break at this point.

10 *THE CLERK:* Everyone rise, please. This Court is in
11 recess.

12 *(Jury exited the courtroom at 10:00 a.m.)*

13 *(Jury entered the courtroom at 10:13 a.m.)*

14 *THE COURT:* Mr. Mekar.

15 *MR. MEKARU:* Yes, Your Honor, the government next
16 calls Anthony Loiacono.

17 *THE CLERK:* If you'll come right over here, please.
18 Raise your right hand.

19 ANTHONY PHILIP LOIACONO

20 *(The oath was administered)*

21 *THE WITNESS:* I do.

22 *THE CLERK:* Be seated, please. State your name for
23 the record, please, and spell your last name.

24 *THE WITNESS:* Anthony Philip Loiacono,
25 L-O-I-A-C-O-N-O.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. MEKARU:

4 Q. Mr. Loiacono, where do you live?

5 A. Bonsall, California.

6 Q. What do you do for a living?

7 A. I'm a marketing executive.

8 Q. Were you doing that same sort of activity back in '99,
9 2000, 2001?

10 A. The last 30 years, yes, sir.

11 Q. Mr. Loiacono, do you know Michael Heshelman?

12 A. Very well.

13 Q. Could you explain to the jury how you know Mr. Heshelman.

14 A. Michael is my first cousin and my best man in my wedding
15 and a person I love very much.

16 Q. Okay. I just want to ask you a few questions here about
17 some of the other business activities you may have engaged in
18 with Mr. Heshelman.

19 Beyond your family relationship did you engage in some
20 sort of business transaction or business relationship with
21 Mr. Heshelman?

22 A. One business transition [sic], correct.

23 Q. Okay. At some point were you associated with or did you
24 have a company called AutoOz?

25 A. Yes, sir, I did.

1 Q. What is AutoOz? Or what was that?

2 A. AutoOz is a customizer of vehicles, and we developed cars
3 for Ford Motor Company or with Ford Motor Company.

4 Q. Okay. Now, I guess back -- well, I'm sorry.

5 At some point did Mr. Heshelman agree to join you in this
6 business venture or some association with AutoOz or have some
7 association with AutoOz?

8 A. His company did, yes.

9 Q. Okay. And you said "his company." Do you remember the
10 name of Mr. Heshelman's company?

11 A. The best I can recall it was Investors First or --
12 Investors First, I believe.

13 Q. Okay. Mr. Loiacono, could you -- why don't we slide the
14 microphone a little closer to you. We had to twist it around
15 for our previous thing.

16 A. No problem. Is that better? Is that better? Can you
17 hear that now?

18 THE CLERK: Pull it closer.

19 MR. MEKARU: This is flexible. We can turn it.

20 THE WITNESS: Is that better? Okay.

21 Q. (BY MR. MEKARU) Okay. Could you explain to us what
22 Mr. Heshelman's role or participation in AutoOz was to be?

23 A. He was going to be -- well, papers were signed where he
24 was -- his company was a 49 percent investor in the company
25 AutoOz.

1 Q. Okay. Well, his, I guess, equity position of 49 percent
2 in your company, was that based on sweat equity, his work,
3 going out and doing -- and building these things for you, or
4 was it some sort of capital position on his part, capital
5 participation?

6 A. It was Investor First capital contribution.

7 Q. Was it --

8 A. Investment into the company so that we could build the
9 vehicles.

10 Q. All right. So was he supposed to bring money to the
11 table, and is that part of his -- is that part of his role with
12 the company?

13 A. That is correct.

14 Q. How much money did Mr. Heshelman agree to -- agree to
15 finance or bring to AutoOz?

16 A. I believe it was \$1.8 million.

17 Q. All right. Now I want to turn your attention to a few
18 actual transactions.

19 You have before you the exhibit books. And I think I've
20 actually opened them up to pages that I would like you to read,
21 sir.

22 A. Okay.

23 Q. Exhibit 5K -- and I realize you may not have seen
24 Exhibit 5K prior to this proceeding, but I do want to ask you
25 about the transaction that's reflected here.

1 Do you have that?

2 A. Yes, sir.

3 Q. Okay. Now, Exhibit 5K is instruction for a wire transfer
4 of \$105,000 going to AutoOz in this Wells Fargo bank account.
5 This would have been in March of 2001. It's March 7th. I
6 think this is actually one of those -- the French 7, but it's
7 not 2, it's 7.

8 Do you remember receiving \$105,000 from an attorney
9 account, Kenneth Warner, back in March of 2001?

10 A. I remember receiving \$105,000 based on the records that I
11 went back and looked at. Kenneth Warner, I don't know that
12 name.

13 Q. Well, who did the \$105,000 come from as far as you were
14 concerned?

15 A. Investor First, the investment part of the \$1.8 million.

16 Q. Okay. And again, Investors First is Michael Heshelman's
17 company?

18 A. Yes, sir.

19 Q. All right. The \$105,000 from Mr. Heshelman's company, was
20 that given to you in any way to be invested in any sort of
21 financial instruments?

22 A. No, sir.

23 Q. All right. AutoOz, it's not a brokerage firm, right?

24 A. No, sir.

25 Q. So no sort of securities, no sort of bonds or no other

1 trading activity that's occurring out of this \$105,000?

2 A. No, sir, we were a customized auto manufacturer.

3 Q. This money, that \$105,000, what would that have gone
4 towards?

5 A. I tried to look back. To the best of my ability, I think
6 50,000 went to Shaquille O'Neal. Some money went to buy a
7 vehicle. I'm not exactly sure of the exact numbers.

8 Q. Shaquille O'Neal. Let's cover that a little bit. Your
9 company was doing this customized auto work. At some point did
10 your company participate in some sort of agreement with
11 Shaquille O'Neal to produce a vehicle for him?

12 A. Not for him. A license under his name.

13 Q. Okay. So he was actually somehow associated with the
14 business plan itself?

15 A. Much like an Eddie Bauer car, an affinity line of
16 vehicles.

17 Q. And that was part of the money went to that.

18 Again, so the money was really going towards the expenses
19 and the costs associated with the AutoOz business?

20 A. That is correct.

21 Q. All right. And I think this wiring instruction, and
22 behind it is page 2, the actual confirmation of the wire
23 transfer is reflected in Exhibit 14. Do you see Exhibit 14?

24 A. Okay.

25 Q. What is Exhibit 14?

1 A. This is Wells --

2 Q. Don't publish it yet, please. I'm sorry. Just a moment.

3 Don't publish it yet, Cindy. Thank you.

4 What is Exhibit 14, sir?

5 A. Is it this one?

6 Q. Yes, it's marked on the bottom.

7 A. It says "Wells Fargo NA."

8 Q. With a P.O. box. And then is it basically a monthly bank
9 account statement for an account of AutoOz?

10 A. It looks like that could be it.

11 Q. All right. And the time period that's covered here, it's
12 page 1, and it's possibly numerous pages, but it's a statement
13 date of March 9th, 2001?

14 A. March 9th, 2001, correct.

15 Q. Upper right-hand corner.

16 A. Yes, sir.

17 Q. Is this just one of the bank statements for AutoOz?

18 A. I don't know that for a fact because it's so long ago, but
19 it looks like it could be, yes, sir.

20 Q. Do you see here in the middle there's some sort of
21 transaction detail?

22 A. February 16th, opening deposit.

23 Q. Okay. And then the March 7th transaction?

24 A. Yes, sir.

25 Q. Okay. Does that correspond with your memory about

1 receiving monies, the \$105,000?

2 A. It seems logical, sir.

3 Q. Okay. Any reason to question that this is one of your
4 bank statements?

5 A. No, sir.

6 MR. MEKARU: I would move for the admission
7 of Exhibit Number 14.

8 THE COURT: Mr. Tracy.

9 MR. TRACY: No objection, Your Honor.

10 THE COURT: It's admitted.

11 MR. MEKARU: Okay. We may publish this to the jury.

12 Q. (BY MR. MEKARU) So as we were kind of describing it here,
13 I think, for the record, in the middle here there was a deposit
14 and credit activity, and we see transaction detail.

15 It would appear that the account was opened sometime in
16 February, and then in March there was a WT fed number with
17 Mellon United National, it looks like some sort of
18 abbreviation, with the originator being Kenneth Warner,
19 Esquire, and \$105,000.

20 So if I may, then, does this appear to be closing kind of
21 a circle, if you will, of we have 5K would be the money being
22 wired out and 14 being confirmation of the money coming in?

23 A. It seems logical to me.

24 Q. Okay. In addition to the \$105,000 that's reflected in
25 these documents, did you receive other monies from

1 Mr. Heshelman as part of his participation or his company's
2 participation with AutoOz?

3 A. To the best of my looking back in records, there was a
4 total of \$193,000 put into AutoOz by Investors First and
5 Michael Heshelman.

6 Q. But the total commitment, though, I thought it was in the
7 neighborhood of 1 million -- in excess of 1 million.
8 1,800,000?

9 A. Correct.

10 Q. And just as another example of other monies that may have
11 come to AutoOz, I have tabbed --

12 A. The GC number here?

13 Q. Yeah, poor handwriting. It's actually 6C.

14 A. Okay.

15 Q. And it's page 7 of 9.

16 A. It looks like at the bottom 1-24-06. Is that correct,
17 sir?

18 Q. Yes.

19 A. Yes, sir.

20 Q. Okay. This is a spreadsheet that was prepared by one of
21 the financial analysts with the FBI who went through the bank
22 records and just basically took all the detailed information
23 and produced this spreadsheet. So it's a compilation of
24 information from a particular bank account.

25 A. Okay.

1 Q. Towards the bottom of page 7 of 9 --

2 A. I think I'm here.

3 Q. Okay. It's actually on the screen as well. Do you see
4 there's a \$25,000 wire transfer to Anthony Loiacono?

5 A. Okay.

6 Q. Do you see that?

7 A. Yes, sir.

8 Q. Now, that \$25,000 wire transfer, was that monies
9 associated with AutoOz, or was that money intended for you
10 personally?

11 A. It would be AutoOz. I've never taken personal -- used
12 personal funds that I would receive from Michael other than an
13 investment.

14 Q. Okay. Or the occasional gift or holiday thing, but
15 nothing of this size or magnitude for personal reasons?

16 A. No. No, sir. It was all together with AutoOz.

17 Q. So this again would represent another portion of the total
18 of \$193,000 that Mr. Heshelman was paying towards this
19 relationship?

20 A. That is correct.

21 Q. Relationship with AutoOz, the business relationship?

22 A. That is correct.

23 Q. Okay. Well, did Mr. Heshelman fulfill his obligation?

24 Did he fulfill the obligation to fund \$1.8 million to AutoOz?

25 A. No, sir, it was a total of, I believe, based on the

1 records, 193 total thousand dollars.

2 Q. Did that have any impact on your business?

3 A. Yes, sir.

4 Q. Did that result in changing your business plan at all with
5 Mr. Heshelman?

6 MR. TRACY: Your Honor, I'm going to object in terms
7 of what AutoOz's business is. There is no relevance to the
8 issues in this case.

9 THE COURT: What is the relevance, Mr. Mekaru?

10 MR. MEKARU: Your Honor, I'm going to explore whether
11 there was any sort of return on this investment that came back
12 to Mr. Heshelman and whether that ultimately turned out to be
13 successful.

14 THE COURT: Well, how is that relevant?

15 MR. MEKARU: Well, to the extent that there's any
16 sort of cash flow -- this is the closest we've come to an
17 investment to see if there's any returning cash flow coming
18 back to First Investors Corp.

19 THE COURT: I'll allow it.

20 Q. (BY MR. MEKARU) All right. So now we've got some sort of
21 idea in terms of the framework here. I want to explore a
22 couple things.

23 First, you had said that the participation with AutoOz was
24 through First Investors, right, and that was Mr. Heshelman's
25 company?

1 A. I think it's Investors First, but . . .

2 Q. Sorry. Investors First.

3 A. Sorry. I'm doing my best.

4 Q. My apologies. Through some of the other things we've
5 heard in this trial we've heard different names. So
6 Investors First.

7 Now, did you have any personal knowledge as to where
8 Mr. Heshelman was getting that money that he brought to AutoOz?

9 A. He provided a document and -- on Investors First that gave
10 me some information and credibility to his financial ability to
11 perform.

12 Q. Okay. Did you get any sense at all of whether this was
13 Mr. Heshelman's personal money or if this was part of an
14 investment block that he was bringing to AutoOz?

15 A. My belief would have been Investors First and his company.
16 Because that's where I got the documentation from. But I've
17 known Michael my whole life too, so . . .

18 Q. I'm sorry, I'm just wondering whether he gave you any
19 indication as to whether Investors First represented his own
20 personal monies that he was participating in this company with
21 or if there was some sense that that was an investment block or
22 some monies that he was managing for others and bringing it to
23 AutoOz.

24 A. I can't answer that with concrete . . .

25 Q. Okay. You have no idea?

1 A. I don't say no idea, but I can't recall that exact
2 conversation. I know that Investors First was a company. I
3 don't know exactly who the other parties were that were part of
4 that company.

5 Q. Okay.

6 A. I know that that was his company.

7 Q. All right. Well, Investors First had a 49 percent stake
8 in AutoOz, right?

9 A. Correct.

10 Q. But at some point did that change?

11 A. Yes, sir.

12 Q. Can you describe for us how it changed and why?

13 A. There was a payment due, a cash call due, and a payment
14 was made that was insufficient funds that allowed me to call
15 Michael and Investors First to ask why, and I did so, and then
16 I reduced his Investor First equity position in the company.

17 Q. Okay. May I break this down a little?

18 A. Yeah.

19 Q. So at some point his commitment required him to send some
20 more money?

21 A. That's correct.

22 Q. And he sent a check, but that bounced?

23 A. That's correct.

24 Q. Did that trigger some sort of contractual change, or did
25 that trigger a contractual term that allowed you to modify the

1 equity position that Investors First held in AutoOz?

2 A. Correct.

3 Q. So what was the change? It went from 49 percent down to
4 what?

5 A. I looked at the document before I came that was sent to
6 the bank, and it was 5.1 percent. So I believe what I did is I
7 calculated the 193 of the 1.8, and that shows a 5.1 percent
8 total investment.

9 Q. Okay. So forgive me again. So then this 5.1 percent
10 basically represented -- the 193,000 was 5.1 percent of his
11 commitment of 1.8 million in rough terms?

12 A. In rough terms. I think it actually comes into -- if you
13 do the math, that's 10 percent, but he owned 49 percent of
14 that, so that's how the 5.1 percent was calculated, I believe.

15 Q. Okay. I'm following you now.

16 All right. So now he has a 5 percent interest. Was the
17 AutoOz company successful and able to return some sort of cash
18 flow back to Investors First?

19 A. No, sir.

20 Q. Any sort of monies at all coming back from this equity
21 position --

22 A. No, sir.

23 Q. -- of 49 percent or 5 percent?

24 A. No, sir.

25 Q. Did the change in the amount of money that

1 Mr. Heshelman was -- the difference between what he committed
2 and what he actually brought forward, did that cause any issues
3 or problems for AutoOz in the business plan?

4 A. Yes, sir.

5 Q. What happened?

6 A. It mandated that I try to find equity to build the
7 vehicles and implement the program. And I was able to find
8 some dollars to do that, but not enough to make it a viable
9 business, but we did our best.

10 Q. What's the status of AutoOz?

11 MR. TRACY: Your Honor, I think the question before
12 Dan indicated to the Court that he was going to explore was
13 whether there was a return or not. Now we're getting into what
14 happened to the company. So I still don't see the relevance of
15 that part.

16 THE COURT: I see the relevance of the earlier
17 questioning. I don't know what the relevance is of the failure
18 of the company.

19 MR. MEKARU: Well, I don't know if we've gotten to
20 the point where he's actually said there was a failure of the
21 company.

22 The defendant has indicated that this is a continuing
23 matter, that there's still a possibility of more monies coming
24 in, and I'm exploring here this participation in AutoOz and
25 ultimately what happened to the company and whether there's any

1 possibility that that investment, albeit different than what
2 was represented, had any chance of returning any money to any
3 investors.

4 *MR. TRACY:* Why can't we just ask that?

5 *THE COURT:* That's a good question. Why don't you
6 just ask that, Mr. Mekaru?

7 *MR. MEKARU:* Okay. Well, I think that's what I was
8 getting at.

9 *THE COURT:* Well, but very slowly. Let's try to be a
10 little more direct, please.

11 *Q. (BY MR. MEKARU)* Okay. I'm sorry. I was going through
12 some foundational questions. But essentially, as you've heard
13 we've had this discussion, is AutoOz still in operation?

14 *A.* No, sir.

15 *Q.* So is it in any way able to provide any money as of today?

16 *A.* No, sir.

17 *Q.* So the total amount of monies that have ever been returned
18 back to Mr. Heshelman or to First Investors, would it be fair
19 to say, is zero?

20 *A.* Correct.

21 *MR. MEKARU:* Thank you.

22 *THE COURT:* Thank you, Mr. Mekaru.

23 Mr. Tracy.

24 *MR. TRACY:* Thank you, Your Honor.

25

CROSS-EXAMINATION

BY MR. TRACY:

Q. Tony, I've been working on your name. Loiacono.

A. Very good.

Q. I'll probably get it wrong before we're done, but . . .

A. Thank you.

Q. Thanks again for traveling with us.

Just in summary, just to make sure that I understand, through Investors First Michael had committed to invest certain dollars with AutoOz, correct?

A. Yes, sir.

Q. And you used the total of I believe \$1.8 million?

A. Total investment, yes, sir.

Q. Right. And ultimately the amount of money that was contributed only amounted to roughly 193,000, correct, sir?

A. Correct.

Q. So he, through Investors First, they failed to live up to the complete commitment made to AutoOz; is that correct?

A. Yes, sir.

Q. Anything more to it than that really?

A. No, sir.

Q. He's still your cousin?

A. Yes.

Q. You still love him?

A. With all my heart.

1 Q. And I take it even though it didn't work this way, the
2 game plan all along was for AutoOz to be a successful company?

3 A. Yes, sir.

4 Q. That's what you were trying to do?

5 A. Yes, sir.

6 Q. Okay. And from 2000 -- 2000 or so was the period of time
7 when the investment was made with AutoOz?

8 A. I think it was -- it actually started -- yeah, right in
9 2000, 2001.

10 Q. Okay. From -- until late 2008 over periods of time did
11 you stay in contact with Mr. Heshelman?

12 A. Yes, sir.

13 Q. And during that period of time were you aware of the fact
14 that he was either traveling to or living in various locations?

15 A. Yes, sir.

16 Q. For example, were there periods of time that he was either
17 living or spending a decent amount of time in New York City?

18 A. I knew there were a couple times that he was in New York
19 City.

20 Q. Okay. And were you aware that he was either living and
21 had a business arrangement in, say, for example, Zurich,
22 Switzerland?

23 A. Very familiar.

24 Q. And you were able to keep in contact with him throughout
25 that period of time?

1 A. Yes, sir.

2 Q. And kept in contact with him even after the investment
3 failed and he failed to live up to his commitment; is that fair
4 to say?

5 A. Yes, sir.

6 Q. And from your conversations with him during that period of
7 time, did it appear to you that he was working and doing things
8 in Zurich, for example?

9 MR. MEKARU: I'm going to object, Your Honor. This
10 is asking for hearsay. All this information would only come
11 from Mr. Heshelman, and the basis of that knowledge would only
12 come from Mr. Heshelman.

13 THE COURT: It's sustained.

14 Q. (BY MR. TRACY) Was he vacationing as far as you could
15 tell from your conversations with him?

16 MR. MEKARU: Again, Your Honor, I'm going to object.

17 THE COURT: Same ruling. Sustained, Mr. Tracy.

18 Q. (BY MR. TRACY) When do you think is the last time you
19 spoke with your cousin?

20 A. It's probably been, I don't know for sure, but I'd say 16
21 to 18 months. Maybe a little bit more; maybe a little less.

22 Q. So sometime in 2007 or 2008?

23 A. I think that would be appropriate.

24 Q. And as near as you can recall, was he in Switzerland at
25 the time that you last talked with him?

1 A. Yes.

2 MR. MEKARU: Again, Your Honor, I'm going to object.

3 THE COURT: Well, we can object all day, Mr. Mekar.

4 I think let's just move along, please.

5 MR. TRACY: Okay.

6 Q. (BY MR. TRACY) I'm sorry, you said the answer was "yes"?

7 A. Yes, sir.

8 MR. TRACY: Thank you very much. Safe travels back
9 to California.

10 THE COURT: Any redirect, Mr. Mekar?

11 MR. MEKARU: No, Your Honor. Thank you.

12 THE COURT: Thank you, Mr. Loiacono. You're excused.

13 THE WITNESS: Thank you.

14 MR. MEKARU: Should we call our next witness?

15 THE COURT: Yes, please.

16 MR. MEKARU: Your Honor, the government calls
17 Dennis Mickelson.

18 THE CLERK: If you'll come forward, please. You can
19 stop there, face me, raise your right hand.

20 DENNIS R. MICKELSON

21 (The oath was administered)

22 THE WITNESS: I do.

23 THE CLERK: Be seated, please. State your full name,
24 please, spell your last name for the record.

25 THE WITNESS: Dennis R. Mickelson, M-I-C-K-E-L-S-O-N.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. MEKARU:

4 Q. Okay. Mr. Mickelson, where do you live?

5 A. I live in Central Valley, Pennsylvania.

6 Q. What city is that near?

7 A. Allentown, Bethlehem.

8 Q. And how are you currently employed?

9 A. I work for a company there called Natural Food Source. I
10 am a sales representative there, and I sell containers of food.
11 We bring in about 400 containers a year, and I have -- I'm a
12 sales representative there to a number of clients I've
13 established.

14 Q. Mr. Mickelson, in December of this past year,
15 December 2008, were you notified and advised that you had been
16 named in a federal Indictment?

17 A. Yes.

18 Q. Were you shown a copy of that Indictment?

19 A. Yes, I was.

20 Q. And were you indicted on charges associated with wire
21 fraud and money laundering?

22 A. Yes, that's correct.

23 Q. And were you named in that Indictment along with
24 Mr. Heshelman and Bryce Sherwood?

25 A. Yes, I was.

1 Q. And did you appear in court on those charges?

2 A. Yes.

3 Q. And were you retained -- excuse me -- were you
4 appointed -- I'll ask it this way: Were you represented by an
5 attorney?

6 A. Yes.

7 Q. Who was that?

8 A. Um, it was just a court-appointed attorney there, and then
9 Scott Mertens here.

10 Q. Okay. So your initial appearance on these charges was in
11 Pennsylvania, and then ultimately when you came to Michigan to
12 face the formal proceedings you were represented by
13 Scott Mertens?

14 A. That's correct.

15 Q. And were you represented by Mr. Mertens through the
16 balance of the proceedings?

17 A. Yes, I was.

18 Q. Are you in fact still represented by Mr. Mertens?

19 A. Correct.

20 Q. Did you come to some sort of negotiated resolution with
21 the government regarding your charges?

22 A. Yes.

23 Q. And was that agreement reduced to writing?

24 A. Yes, it was.

25 Q. Was it reduced to a Plea Agreement?

1 A. Yes.

2 Q. All right. Now, you've got two binders in front of you.
3 I want you to turn to volume number II which contains
4 Exhibit Number 23.

5 A. Okay. Volume II is to my right?

6 THE COURT: It should be marked on the -- both on the
7 spine and on the front of the binder.

8 THE WITNESS: I see. 23. 23. Yes, I've found it.

9 Q. (BY MR. MEKARU) Okay. Why don't you put that in front of
10 you.

11 Now, Mr. Mickelson, why don't you turn to the last page of
12 what's been marked as Proposed Exhibit Number 23.

13 A. Yes, I have it.

14 Q. Okay. Is that your signature?

15 A. Yes, it is.

16 Q. Did you sign this document on or about May 12th, 2009?

17 A. Yes, I did.

18 Q. Below is the signature of a Scott Mertens. Is that your
19 attorney that you were speaking of?

20 A. Yes.

21 Q. And is this your Plea Agreement?

22 A. Yes.

23 MR. MEKARU: I'd move for the admission
24 of Exhibit Number 23.

25 THE COURT: Mr. Tracy.

1 MR. TRACY: No objection, Your Honor.

2 THE COURT: It's admitted.

3 Q. (BY MR. MEKARU) Okay. Now let's turn back to the front.
4 On the first page, paragraph 1, you're agreeing to plead guilty
5 to Count 1 of the Indictment as well as not contesting a
6 forfeiture allegation.

7 Is that your understanding of what you pled guilty to?

8 A. Yes.

9 Q. All right. Paragraph 2 outlines the elements. I note
10 that -- go back out again.

11 This indicates it's a corrected Plea Agreement. Did we go
12 back and correct the elements and make sure we had the proper
13 elements laid out for paragraph 2?

14 A. Yes, that's correct.

15 Q. Is that the nature of the correction?

16 A. Yes.

17 Q. Okay. Paragraph 3 goes through the possible penalties
18 that might be imposed, and paragraph 4 and 5 go through and
19 discuss some of the financial aspects of your resolution of the
20 case. There might be some restitution; there might be some
21 forfeiture.

22 And then paragraph 6 goes through, and there's a
23 commitment by you to assist in identifying any assets that may
24 be paid towards restitution and forfeiture.

25 Does that sound about right?

1 A. Yes.

2 Q. All right. Paragraph 7. Paragraph 7 is titled
3 "Defendant's Cooperation."

4 What's your understanding of your obligation under
5 paragraph 7?

6 A. That I have to -- that I agree to fully cooperate with all
7 proceedings.

8 Q. Okay. Now, that cooperation, would that include a meeting
9 with the FBI?

10 A. Yes.

11 Q. Also include possibly testifying if called upon?

12 A. Yes.

13 Q. All right. We'll come back to that in a moment.
14 Paragraph 8 goes through the guidelines that will help to
15 assist to compute your sentence. And then paragraph 9 deals
16 with this waiver of appeal and collateral attack.

17 As far as you understand, does the law permit you to
18 appeal your sentence, the sentence that's imposed by this Court
19 and go to the Court of Appeals and ask that it be reviewed?

20 A. No, I cannot do that.

21 Q. The law provides for that?

22 A. Yes.

23 Q. But this paragraph says that you're giving up that right?

24 A. Yes.

25 Q. That basically you will accept whatever sentence this

1 Court imposes on you?

2 A. That's correct.

3 Q. Now, paragraph 10 goes through and starts to outline what
4 the government will do in exchange as far as this
5 Plea Agreement.

6 The U.S. Attorney's Office will move to dismiss the
7 remaining counts at the time of sentencing.

8 Were you named in a whole series of counts in the
9 Indictment?

10 A. Yes, I was.

11 Q. Were there approximately 40 charges?

12 A. That's correct.

13 Q. So you've only had to plead guilty to just one instead of
14 40?

15 A. That's correct.

16 Q. Subparagraph B, there's a paragraph here for reduction for
17 acceptance of responsibility.

18 As far as you understand, do the guidelines permit your
19 sentence to be reduced if you qualify for certain terms?

20 A. Yes.

21 Q. If you accept responsibility for your conduct, that that
22 can help to reduce your sentence?

23 A. Yes, that's correct.

24 Q. And one step towards that might be pleading guilty?

25 A. Yes.

1 Q. Paragraph C, has the government agreed that in addition to
2 that potential reduction for your acceptance of responsibility
3 that the government will review your cooperation and your
4 assistance and evaluate the possibility of asking the judge to
5 reduce your sentence more?

6 A. That's correct.

7 Q. Does the judge have to agree to reduce your sentence?

8 A. No. It's up to the Court.

9 Q. Does the Court have the discretion to either go farther
10 and give you more of a reduction or a lesser reduction than the
11 government suggests?

12 A. Yes, that's my understanding.

13 Q. Okay. And subparagraph D is the U.S. Attorney's Office
14 agreed not to use your statements and your admissions against
15 you in the computation of your sentence?

16 A. Yes.

17 Q. And paragraph 11, I think, is what you've already kind of
18 indicated here, is that this is really an agreement between
19 yourself and the United States Attorney's Office, but it
20 doesn't really bind the judge. Is that true?

21 A. Yes.

22 Q. All right. Now, in addition to the Plea Agreement, did
23 you also enter into what's called a Proffer Agreement?

24 A. Yes.

25 Q. And is that again some sort of formal provision where the

1 government agreed not to use your words against you?

2 A. Yes.

3 Q. But what would be the effect on both your Proffer
4 Agreement and your Plea Agreement if you lied?

5 A. They would be null and void.

6 Q. So all those charges, could those all come back?

7 A. Yes.

8 Q. And what about your statements, could all those statements
9 that you've made be used against you?

10 A. Yes.

11 Q. So let me see if I can kind of summarize here what your
12 bargain is with the government.

13 You're supposed to cooperate, right?

14 A. Yes.

15 Q. In exchange has the government reduced the total number of
16 charges just to one?

17 A. Yes.

18 Q. And basically capped out the max amount of time that you
19 could face?

20 A. Yes.

21 Q. In addition to what the government has done, are you also
22 hoping that the judge will impose a sentence that might even be
23 lower than you might otherwise get?

24 A. Yes, I would hope that would be true, but it is up to the
25 Court.

1 Q. All right. And what are you required to do in exchange?

2 A. I'm required to tell the truth and to cooperate in these
3 proceedings and any other proceedings that might pertain.

4 Q. All right. Is that why you're here testifying today?

5 A. Yes.

6 Q. All right. Mr. Mickelson, do you know Michael Heshelman?

7 A. Yes, I do.

8 Q. Have you met with Mr. Heshelman in person?

9 A. Yes, I have.

10 Q. On just one occasion, or would it be several and numerous?

11 A. I believe five occasions.

12 Q. Do you see Mr. Heshelman in court here today?

13 A. Yes, I do. He's seated directly behind you.

14 MR. MEKARU: Your Honor, may the record indicate that
15 the defendant has been identified by Mr. Mickelson?

16 THE COURT: Yes, it may.

17 MR. MEKARU: All right.

18 Q. (BY MR. MEKARU) Mr. Mickelson, how did you meet
19 Mr. Heshelman?

20 A. It was through an introduction through Ellis Smith.

21 Q. Okay. Well, then how did you meet Mr. Smith?

22 A. I was buying Chinese bonds at the time through Sam Kram,
23 and Sam Kram suggested that I call Ellis Smith, and Ellis Smith
24 said that I should talk to Michael Heshelman and that he might
25 be able to help me with those bonds.

1 Q. Okay. So there's a whole series of people. Let's back
2 this up a little bit.

3 You talked about some bonds.

4 A. Correct.

5 Q. What were these bonds?

6 A. These were Chinese gold-backed bonds. They were
7 historical documents.

8 Q. These Chinese bonds, were these -- were these being used
9 as some sort of an investment?

10 A. Yes, that's correct.

11 Q. Was this a legitimate investment or a fraudulent
12 investment?

13 A. Fraudulent.

14 Q. Now, the fact that this was a fraud, was that known by
15 Mr. Kram?

16 A. Yes, I believe it was.

17 Q. Okay. And likewise, was this -- the nature of these
18 Chinese bonds and the fraud, was that also known to Mr. Smith?

19 A. Yes, I believe so.

20 Q. Now, basically, as far as you understand, were Mr. Kram
21 and Mr. Smith also engaged in some sort of fraudulent
22 activities as it relates to investments and those sort of
23 financial --

24 A. Related to the bonds, yes.

25 Q. So let me see if I understand this. You have these

1 fraudulent bonds that Mr. Kram and Mr. Smith also had knowledge
2 of and they were helping you with. And who did they direct you
3 towards as someone who might be able to help you with these
4 fraudulent bonds?

5 A. Michael Heshelman.

6 Q. Now, did you discuss the fact that these bonds were -- the
7 nature of these bonds with Mr. Heshelman?

8 A. Yes.

9 Q. Okay. Well, as far as you know, why did these individuals
10 direct you to Mr. Heshelman?

11 A. I believe that Mr. Heshelman was capable of doing
12 something with these bonds.

13 Q. Okay. What do you mean by capable of doing something with
14 them?

15 A. Either selling them or being able to create a credit line
16 against them and using them in some fashion in a trading
17 program or some other illegitimate method.

18 Q. So selling them. I mean -- so misrepresenting their value
19 and selling them to someone?

20 A. Yes, that's correct.

21 Q. And using them as collateral. Again, would that be --
22 involve some sort of misrepresentation about their value to be
23 able to inflate their perceived value so somebody would give
24 you money based on those documents?

25 A. Yes.

1 THE COURT: Mr. Tracy.

2 MR. TRACY: Objection, Your Honor. We have a lot of
3 leading going on here. Most of the time I don't have a problem
4 with it, but I'm pretty unfamiliar with these bonds.

5 THE COURT: I agree, Mr. Tracy. You have, Mr. --
6 we've given you an awful lot of leeway on the leading,
7 Mr. Mekaru, but I think we are getting into an area that I
8 don't think anybody in the courtroom really has enough
9 familiarity with to let you go ahead and lead this witness so
10 extensively.

11 MR. MEKARU: Okay. I was trying to move through
12 this, but all right. I'll rephrase the questions.

13 Q. (BY MR. MEKARU) All right. So once the -- once you
14 actually had a conversation with Mr. Heshelman about the bonds,
15 what happened next with respect to the bonds?

16 A. I gave Michael Heshelman 500 bonds approximately, and
17 transferred, transferred the physical bonds to him.

18 Q. Had there been any exchange of money, not between you and
19 Mr. Heshelman, but before that when you came into the business
20 with these bonds?

21 A. Yes. Yes, I purchased these bonds from Sam Kram. Quite a
22 number of bonds. There was about \$700,000 worth of bonds that
23 I purchased.

24 Q. Did you use your own personal money?

25 A. No, I did not. I used other people's money to do that.

1 Q. All right. So, I'm sorry, I interrupted you. You said
2 that you were given the bonds by Mr. Heshelman.

3 Then what happened next with respect to the bonds?

4 A. Not much. Time went by and nothing was really done with
5 them to create any kind of money.

6 Q. All right. Well, did you continue any sort of
7 relationship with Mr. Heshelman?

8 A. Yes, I did.

9 Q. Well, what happened next with respect to your relationship
10 with Mr. Heshelman?

11 A. After I established a relationship with Mr. Heshelman, we
12 had talked about private placement and using bonds, another
13 type of bonds as a secured placement to be able to use
14 investors' money, which was also fraudulent.

15 Q. Okay. Now, you said "we talked about this." Was this
16 your idea or was it Mr. Heshelman's?

17 A. This was something that he said that he was able to do.

18 Q. Did he describe for you how this investment plan would
19 work?

20 A. Yes. Basically monies would be held in an account, and in
21 this case monies would be sent to Ken Warner. And this was a
22 situation where it was described to the investor to be safe.
23 And that most of this money would be held in an escrow account
24 with the attorney, and that there would be bank bonds that
25 would be purchased. Bank bonds and with a spread. And then

1 profits would be made. At least 10 percent a month is what we
2 had told the investors.

3 Q. Okay. Now let me see if I can break this down a little
4 bit.

5 Was that the -- in actuality was that the plan, the course
6 of conduct that was going to be pursued, or was that what the
7 pitch to the investors was going to be?

8 A. That was basically the pitch to the investors.

9 Q. Well, in reality what was to happen with the money?

10 A. The money went to Ken Warner's account, and it was
11 disbursed out to myself, to Michael Heshelman, and to other
12 parties.

13 Q. Okay. So I think I jumped ahead here a little bit about
14 what happened to it. But did some investor actually get
15 presented with this program or this plan?

16 A. Yes. I had discussions with Mr. Heshelman, and he asked
17 me if I could find some investors. And I did that in the form
18 of -- the first person that I had talked to about this was
19 Mike Edwards. And Mike Edwards subsequently put \$360,000 with
20 Mr. Heshelman after an introduction. I introduced Mike Edwards
21 after I had basically outlined it to him, and he was
22 interested. I put him in touch with Mr. Heshelman, and
23 contracts were done, money was transferred to Ken Warner's
24 account.

25 Q. Okay. How did you come to meet Mr. Edwards?

1 A. This was through an introduction also through Bill Green.

2 Q. All right. Now, Mr. Edwards you said had invested some
3 \$360,000 and transferred that money. Did that \$360,000 figure
4 come to have any significance as you go forward?

5 A. Yes, it did actually. It became a unit, what we talked to
6 investors about. Subsequently other investors came in with
7 360, 720, a million eighty. So it became a unit with -- that
8 we talked to investors about.

9 Q. The \$360,000 figure, though, was that what was originally
10 presented to Mr. Edwards as the unit that he was to put in for
11 this investment?

12 A. No, actually it was the amount of money that he had
13 available to him to invest. So it was an arbitrary amount. It
14 wasn't a set amount. It was not -- it just became the unit as
15 an arbitrary amount.

16 Q. All right. Now, you said Mr. Edwards then invested with
17 you and Mr. Heshelman's program.

18 Did he wire-transfer money to Ken Warner?

19 A. Yes.

20 Q. Now, Ken Warner, was he your attorney?

21 A. No, it was -- he was not.

22 Q. Whose attorney was he?

23 A. This was Michael Heshelman's attorney that he selected for
24 this.

25 Q. And prior to this participation where we have Mr. Edwards,

1 was there already some sort of relationship between
2 Mr. Heshelman and Mr. Warner?

3 A. Yes, I believe that's correct. I do remember discussions
4 with Mr. Heshelman that he said that he liked to use Ken Warner
5 because Ken did what he said he would do. What he was
6 instructed to do.

7 Q. All right. Do you have, or did you at the time, did you
8 have any knowledge as to what happened to Mr. Edwards' money
9 once it went into the attorney's trust account?

10 A. No, I did not. I was not privy to the bank accounts or
11 had direct contact with Ken Warner.

12 Q. Did you have any -- yourself any authority to direct money
13 to come out of that account, I mean coming back to you?

14 A. No, I did not. I had no direct contact with Ken Warner at
15 that time.

16 Q. So did you receive any monies from Mr. Edwards' investment
17 of \$360,000?

18 A. No, not initially.

19 Q. So I think you said here that Mr. Edwards was the first
20 investor?

21 A. Correct.

22 Q. Were there subsequent investors?

23 A. Yes, there were.

24 Q. Who was next?

25 A. Tim Oliver was the second person that I talked to about

1 this and outlined this to him, and he was interested. And
2 again I put him in touch with Mr. Heshelman after he expressed
3 interest, and contracts were drawn up, monies were sent in, and
4 then subsequently I did receive monies.

5 Q. All right. Mr. Oliver. How did you come to find
6 Mr. Oliver?

7 MR. TRACY: I think you called him Mr. Oliver.
8 Instead of saying "Mr. Mickelson," you said "Mr. Oliver."

9 THE COURT: No, he just was referencing --

10 MR. TRACY: Oh, sorry, it's a little confusing.

11 Q. (BY MR. MEKARU) Let's talk about Mr. Oliver a little
12 more. How did you come to meet Mr. Oliver?

13 A. Yes, again through Bill Green and one additional person,
14 Robert DeTour.

15 Q. Let me explore this a little further. What was your role
16 as it relates to this plan that you and Mr. Heshelman had?

17 A. Well, he basically told me that he would pay me for each
18 investor that I brought forward.

19 Q. So were you supposed to go out and find people for him?

20 A. Yes.

21 Q. And who was ultimately supposed to close the deal?

22 A. I would present the initial pitch, if you want to use that
23 word, to the investors, and I would put them in touch with
24 Mr. Heshelman.

25 Q. So as far as that actual negotiation of terms, the

1 contracts, and everything else that culminated in the
2 investment, did you participate in those sort of discussions?

3 A. Would you repeat the question, please?

4 Q. Yes, sir. In terms of the actual contracts, the
5 negotiating a contract with the investor and determining the
6 terms of that contract, did you participate in those
7 negotiations with the customer?

8 A. No, those were outlined by Mr. Heshelman.

9 Q. All right. Now, you had indicated that you received some
10 money as it relates to Mr. Oliver's participation.

11 A. That's correct. I received -- after Mr. Oliver put in
12 \$360,000, I received \$10,000.

13 Q. Did you talk to Mr. Heshelman about receiving that money?

14 A. Yes, I did. He said, "Now you can tell people that you've
15 been paid on a trading program."

16 Q. Well, what did that mean? What was the significance of
17 that?

18 A. Well, just basically stating that now I can tell people
19 that, yes, I have made money on this transaction. And I also
20 received subsequent monies the second time Mr. Oliver put in
21 money, which was \$720,000, which I received more money.

22 Q. Okay. Sorry. Just to make sure we're clear here. The
23 \$720,000, is that Mr. Oliver's second investment?

24 A. That's correct.

25 Q. And how much money did you receive after his second

1 investment?

2 A. At least \$40,000.

3 Q. So in total approximately how much money did you receive
4 off Mr. Oliver's money?

5 A. At least \$50,000.

6 Q. Who decided how much money you would get?

7 A. Mr. Heshelman.

8 Q. Did you have any discretion again to go back to
9 Mr. Warner, now the second transaction, to go back to
10 Mr. Warner and say, Well, I want more?

11 A. No. No, Mr. Heshelman was the one that decided how much I
12 would receive and subsequently others would receive.

13 Q. Did you -- I want to now go backwards a little bit here to
14 Mr. Edwards. Was Mr. Edwards paid back any money on his
15 investment?

16 A. Yes, he was.

17 Q. Did you have discussions with Mr. Edwards about the fact
18 that he was getting money back?

19 A. Yes, I did.

20 Q. All right. What was your understanding as to how much
21 money Mr. Edwards got back from his investment?

22 A. He got his original investment back plus a little bit
23 more.

24 Q. So it was \$360,000 plus how much?

25 A. Approximately 400,000, perhaps 409,000.

1 Q. In total?

2 A. In total.

3 Q. The flow of money back to Mr. Edwards, did any of that
4 money that went back to Mr. Edwards come through you?

5 A. Yes, it did.

6 Q. And how is that?

7 A. Mr. Heshelman distributed to me and asked me to be able
8 to -- initially there were a number of payments that went
9 directly to Mike Edwards, and at some point Mr. Heshelman
10 distributed that money to me, and I distributed it back to
11 Mike Edwards.

12 Q. Now, we've seen in some of our other documents and
13 spreadsheets some monies go to a M.A. Edwards Associates. M.A.
14 Edwards & Associates.

15 A. Correct. That's his company.

16 Q. So if we see money on these spreadsheets or on the other
17 banking records coming from the attorney trust account back to
18 M.A. Edwards, that's the return of his money?

19 A. That's the money that was directed back to him, correct.

20 Q. But in addition, let me understand this, some of this
21 actually went through your own bank account?

22 A. That's correct.

23 Q. Why?

24 A. Mr. Heshelman asked me to be able to send it directly to
25 him rather than from him.

1 Q. Did you have any discussion with Mr. Heshelman why money
2 had to go through you?

3 A. I wanted him to send it directly, but he sent it to me and
4 asked me to do it, instructed me to do it, and I did it.

5 Q. Now, you have also before you Exhibit Number 26. That's
6 not in evidence.

7 A. Yes, I'm there.

8 Q. Do you have that?

9 A. Yes.

10 Q. And in preparation for the, I guess, the litigation of
11 this case, did you go back and try to dig up some of your own
12 bank records?

13 A. Yes, I did. I wanted to see exactly amounts that were
14 correct before I told you anything.

15 Q. Okay. And did you go pull up your own bank records from
16 your own -- from your own collection of documents?

17 A. Yes.

18 Q. And did you put together essentially a spreadsheet kind of
19 tallying out some monies?

20 A. That's correct.

21 Q. What is Exhibit Number 26 then?

22 A. This is monies that were paid to me that was sent back to
23 Mike Edwards or his girlfriend or in one case his attorney.

24 Q. And did you -- I'm sorry, did you prepare this document?

25 A. Yes, I did.

1 Q. Behind that document are a series of bank statements.

2 A. Correct.

3 Q. What are those bank statements?

4 A. That's supporting documentation showing monies that I sent
5 out from my account to M.A. Edwards & Associates or to
6 Mike Edwards or to his girlfriend or attorney.

7 MR. MEKARU: I move for the admission
8 of Exhibit Number 26.

9 THE COURT: Mr. Tracy?

10 MR. TRACY: No objection, Your Honor.

11 THE COURT: It's admitted.

12 Q. (BY MR. MEKARU) All right. And, Mr. Mickelson, now did
13 you prepare this document at the request of the government or
14 the U.S. Attorney's Office?

15 A. No.

16 Q. When did you make the government aware that you had this
17 spreadsheet and present the spreadsheet and the bank records?

18 A. Did you ask me why?

19 Q. No, when.

20 A. When. This was within the last couple of weeks. Two or
21 three weeks.

22 Q. The actual bank statements, though, were these actually
23 turned over --

24 A. Very recently.

25 Q. -- last Friday?

1 A. Yes.

2 Q. Okay. So let me just walk through this. Can you flip to
3 the second page?

4 All right. So there are two items that are being shown on
5 this document. First Union is your bank account?

6 A. Correct.

7 Q. Is your bank? Does there appear to be money coming in, am
8 I reading this right, from Ken Warner for \$30,000?

9 A. Yes.

10 Q. And then money going out at \$20,000. And on the last line
11 there's an M.A. Edwards & Associates, Inc.?

12 A. Correct.

13 Q. Now, were these all wire transactions?

14 A. Yes.

15 Q. Money being wired in and money being wired out on to
16 Mr. Edwards?

17 A. Yes.

18 Q. And the date of that would be --

19 A. January 5th, 2000.

20 Q. Why don't I see that? Can we back up, please?

21 A. It's at the top. In the right-hand portion on the top.

22 Q. Okay. May we look at the detail? Posting date for that
23 particular transaction.

24 A. Yes.

25 Q. Okay. So then did you take that information and reflect

1 that back on page 1?

2 A. Yes, I did.

3 Q. Can we go back to page 1, please? January 5th, 2000, item
4 number 1, \$20,000.

5 A. Correct.

6 Q. Now, I don't want to go through this whole exhibit, but
7 basically is that what you did to produce the summary page,
8 page number 1?

9 A. Yes, with the one exception.

10 Q. And with respect to this exhibit was there an exception?

11 A. Yes, there was.

12 Q. Okay. What would that be?

13 A. On number 5, this was monies that was given directly to
14 Mike Edwards by myself. Mr. Heshelman told me to go ahead and
15 pay Mike Edwards \$25,000 cash and that he would wire me the
16 money.

17 Q. I'm sorry. You lost me. So do you not have the document
18 for that, or is that --

19 A. No, this was not -- every other item on this page I have
20 supporting documentation on with the exception of number 5.

21 Q. All right.

22 A. I put number 5 on there because I am quite clear that I
23 paid Mike Edwards that money at the direction of
24 Michael Heshelman.

25 Q. Okay. Now, you said Mr. Edwards got a total of \$400,000

1 back from his \$360,000 investment.

2 Who made the decision to give him more money back?

3 A. Mr. Heshelman.

4 Q. Why?

5 A. Well, it just made sense at the time. I believe it's
6 better to have some people that are paid off.

7 Q. Can you explain to the jury why that makes sense to have
8 an investor paid off?

9 A. Well, it acts as a good reference, and it shows that some
10 people are making money.

11 Q. So was Mr. Edwards then available as a reference for
12 future investors?

13 A. Yes.

14 Q. Did you ever call upon Mr. Edwards to give a reference or
15 make any sort of recommendation to other investors?

16 A. It was not necessary.

17 Q. But as you went forward, did you know that he was
18 potentially available to do so?

19 A. Yes.

20 Q. Okay. Now, the money that went back to Mr. Edwards, did
21 you have any sense as to where that came from?

22 A. It came from the trust account of Ken Warner, the
23 attorney, at the direction of Mr. Heshelman.

24 Q. And those underlying funds, the source of the monies that
25 were in the trust account, did you have any sense of where

1 those underlying funds came from?

2 A. Yes. I had conversations with Mr. Heshelman in February,
3 approximately February of 2000, where Tim Oliver had already
4 received back \$1.5 million on his -- you know, on the monies
5 that were directed to him, and that he couldn't expect more,
6 and that those monies did come from the trust account and from
7 subsequent other investors.

8 Q. I'm sorry, could you explain this a little bit? So this
9 conversation you had, was that with Mr. Heshelman?

10 A. Yes.

11 Q. All right. And the context of the conversation relates to
12 Mr. Oliver?

13 A. Correct.

14 Q. Now, Mr. Oliver had invested approximately \$1 million,
15 1 million --

16 A. 1,080,000.

17 Q. And was Mr. Oliver getting money back from his investment?

18 A. Yes.

19 Q. And did you have some sense as to how much money
20 Mr. Oliver was getting back?

21 A. Yes. At that point in time he had gotten slightly more
22 than \$1.5 million.

23 Q. And who made the decision to give Mr. Oliver his money
24 back?

25 A. Mr. Heshelman.

1 Q. And how much -- and who made the decision about how much
2 money to give him back?

3 A. Mr. Heshelman.

4 Q. So, I'm sorry, then you were describing this conversation
5 you had with Mr. Heshelman. Why were you talking to him about
6 the amount of money that he was getting -- that Mr. Oliver was
7 getting?

8 A. Could you repeat the question, please?

9 Q. I'm sorry. Let me repeat that.

10 Tell me about the conversation you had with Mr. Heshelman
11 about Mr. Oliver getting his money back.

12 A. Okay. Basically it was I was talking to Mr. Heshelman,
13 and he had said that he had already received back over 1 1/2
14 million dollars and he couldn't expect to receive any more. I
15 mean, what more could he want?

16 Q. Now, why was Mr. Oliver given more money than he had put
17 in?

18 A. This was a decision that was made by Mr. Heshelman. He
19 had been in constant contact with Mr. Heshelman and was also an
20 attorney.

21 Q. He -- I'm sorry, just so we're clear here, "he" who was an
22 attorney?

23 A. Mr. Oliver --

24 Q. Okay.

25 A. -- was an attorney and was in quite close contact with

1 Mr. Heshelman. And Mr. Heshelman made a decision to return his
2 money in that fashion.

3 Q. All right. So the first two people, they got their money
4 back and more; would that be fair to say?

5 A. Yes.

6 Q. Was there any discussion about having Mr. Oliver also
7 available to maybe act as a reference since he got more money
8 back?

9 A. No, there was no immediate discussions, no.

10 Q. Well, what happened next in chronological order with
11 respect to this investment plan with Mr. Heshelman?

12 A. Next I introduced Bryce Sherwood to Mr. Heshelman, and at
13 that point in time Mr. Sherwood started bringing forward
14 investors.

15 Q. Okay. So how did you meet Bryce Sherwood?

16 A. An introduction through Jeff Straiter. Also talking to
17 him about the same type of investments, the same investment.
18 And he referred me to Bryce Sherwood, and I talked to
19 Bryce Sherwood about this, and he was keen on bringing -- at
20 least initially very receptive and then quickly after that
21 started bringing investors forward.

22 Q. So let me explore this a little bit. Mr. Straiter, as far
23 as you know was Mr. Straiter involved in the same sort of
24 investment fraud?

25 A. He was very keen on it, yes, and was receptive to it, yes.

1 Q. So why didn't Mr. Straiter himself participate?

2 A. He did not have any investors that I know of that he
3 brought to me.

4 Q. So if he didn't have them, he then thought that
5 Mr. Sherwood would be interested in this investment fraud and
6 new people?

7 A. Yes.

8 Q. Okay. So did you then meet with Mr. Sherwood?

9 A. Yes, I talked to him over the telephone and subsequently
10 established a relationship, and he started to bring investors
11 forward.

12 Q. Okay. Well, did Mr. Sherwood have prior knowledge or a
13 prior relationship with Mr. Heshelman?

14 A. No.

15 Q. Well, what was Mr. Heshelman's reaction on your decision
16 to go out and get Mr. Sherwood involved?

17 A. He said that he would pay me for each investor that was
18 brought forward. That even though Bryce Sherwood was bringing
19 them forward, I would still get paid.

20 Q. Okay. Well, we'll come back to that.

21 So was Mr. Sherwood able to find investors for this
22 investment fraud?

23 A. Yes.

24 Q. Who did he find first?

25 A. I believe it was Allan Clyde.

1 Q. Now, did you participate in any communications with
2 Mr. Clyde in presenting this investment?

3 A. No.

4 Q. Did you act as any sort of a reference, anything along
5 those lines for Mr. Clyde?

6 A. No. That happened later, but for Mr. Clyde, no.

7 Q. Well, do you have any sense, based on your conversations
8 with Mr. Sherwood or Mr. Heshelman, about whether Mr. Clyde
9 actually decided to invest?

10 A. Yes, I was told that he was going to invest, and once that
11 money was available, I was paid quite handsomely.

12 Q. Okay. So at some point you -- who told you that Mr. Clyde
13 had decided to invest?

14 A. Mr. Sherwood and Mr. Heshelman. He said -- I had a
15 discussion with Mr. Heshelman, and he said he was taking
16 \$180,000 and he was sending me \$180,000.

17 Q. Each?

18 A. Each.

19 Q. And of that \$180,000, was any of that to go to
20 Mr. Sherwood?

21 A. Yes, 25,000.

22 Q. Who decided that amount?

23 A. Mr. Heshelman.

24 Q. And did you in fact forward \$25,000 on to Mr. Sherwood?

25 A. Yes, I did. I don't have supporting documentation, but

1 from my memory, yes, I would have paid Mr. Sherwood 25,000.

2 Q. Did you have any conversation with Mr. Heshelman about --
3 where he commented on the success of Mr. Clyde's investment,
4 the being able to close that deal or find that investor?

5 A. Well, I got the sense that the better job I did, the more
6 money I would be paid.

7 Q. Mr. Clyde's investment, that was in December of '99?

8 A. Yes, December 23rd is when he sent that monies.

9 Q. Did Mr. Heshelman comment anything about that being the
10 holiday season?

11 A. Yes, as a matter of fact, he did. He said it was going to
12 be a good Christmas.

13 Q. All right. Did you have any knowledge or understanding
14 about the terms of the contract with Mr. Clyde?

15 A. Yes, it was my understanding that in that contract there
16 was a 30 percent clause. 70 percent was to be held in
17 Ken Warner's account, 30 percent could be used for expenses
18 to -- at Mr. Heshelman's discretion.

19 Q. How much money did Mr. Clyde invest?

20 A. 1.08 million. 1,080,000.

21 Q. So how many units did that reflect?

22 A. Three.

23 Q. So you knew about this 30 percent clause, but how much
24 money did you and Mr. Heshelman get immediately out of this
25 money?

1 A. \$360,000.

2 Q. Was that within the terms?

3 A. No, it was not.

4 Q. All right. I'm going to come back to this monies going to
5 Mr. Sherwood here, but let's go forward then to the next
6 investor.

7 After Mr. Clyde's participation or investment, who was
8 next?

9 A. I believe it was Paul Ramsey.

10 Q. Who found Mr. Ramsey?

11 A. Again, Mr. Sherwood.

12 Q. Did you ever speak to Mr. Ramsey, pitch this investment to
13 Mr. Ramsey?

14 A. No, I did not. It was not necessary.

15 Q. Did you ever have to talk to Mr. Ramsey afterward about
16 the status of his investment?

17 A. Not that I remember.

18 Q. Were you told by Mr. Sherwood and Mr. -- and/or
19 Mr. Heshelman the total amount of monies coming in from
20 Mr. Ramsey?

21 A. Yes, again I believe it was 1,080,000. I'd have to refer
22 to the spreadsheets, but I believe that's correct.

23 Q. And did Mr. Ramsey eventually decide to invest more money?

24 A. I believe he did.

25 Q. Okay. Now, if you're not talking to Mr. Ramsey, how are

1 you getting your information about what Mr. Ramsey is doing?

2 A. Through Mr. Sherwood and -- excuse me, first through
3 Mr. Heshelman and then Mr. Sherwood.

4 Q. Okay. When Mr. Ramsey decided to invest, decided to give
5 \$1,080,000, were you compensated at all?

6 A. Yes, I was.

7 Q. How much money did you get?

8 A. I'd have to look at the spreadsheet, but again I believe
9 it was \$180,000. And there were some other subsequent amounts
10 that I received that I directed back to Mike Edwards. So
11 there's a flow of money going to me and through me.

12 Q. Okay. Now, you said you'd need to refer to the
13 spreadsheets.

14 In the litigation of this case, and I guess maybe going
15 back to even the grand jury, have you seen some spreadsheets
16 that were prepared by the FBI?

17 A. Yes.

18 Q. And you've seen some of the details of the transactions?

19 A. Yes.

20 Q. And do those transactions assist you in remembering
21 exactly who put in money when and how much?

22 A. Yes, correct.

23 Q. Okay. Let's turn to -- I think Mr. Ramsey may help you
24 here. I think it's in 12C. No, 12D.

25 A. I'm there.

1 Q. Okay. So you mentioned that he had invested \$1,080,000.
2 If we go through the list, once the money came in -- we'll go
3 through the list of the money going out. There's EMA or
4 EMA Hotel. Do you have any knowledge of what that is?

5 A. I did not stay there. I believe this was a hotel bill
6 that was paid for Mr. Heshelman.

7 Q. Okay. This Hoffman Dorchedk, any idea what that is?

8 A. No.

9 Q. John Grayshan, any idea who that is?

10 A. No.

11 Q. Prism Mortgage is getting a hundred thousand dollars. Who
12 is Prism Mortgage?

13 A. Tim Oliver.

14 Q. And then \$180,000 goes to Dennis Mickelson?

15 A. Correct.

16 Q. And then later down, jumping ahead here, another \$50,000
17 went to Bryce Sherwood?

18 A. Yes. At this point Mr. Sherwood was receiving monies
19 directly from Mr. Heshelman and also from myself.

20 Q. So of that \$180,000 that was sent to you, did any of that
21 go to Bryce Sherwood?

22 A. I believe it did, yes. I'd have to refer again back to
23 the other, but yes. I'm sure \$25,000. There were some other
24 amounts that I listed there, so that would be accurate.

25 Q. Okay. We'll explore this a little now.

1 I guess in preparation for your testimony did you start
2 going through and start pulling other bank records like you did
3 for the Mike Edwards bank information?

4 A. Yes, I did.

5 Q. And did you go back to see if there were -- you had bank
6 records for monies that were being transferred from yourself to
7 Mr. Sherwood?

8 A. Yes, I did.

9 Q. Did you also prepare another spreadsheet or summary of all
10 that banking activity?

11 A. Yes, I did.

12 Q. And you have what's been marked as Exhibit Number 25 in
13 front of you?

14 A. Yes.

15 Q. Is that the spreadsheet?

16 A. Yes, it is.

17 Q. All right. What are the pages behind that spreadsheet?

18 A. Supporting documentation from my bank as showing fund
19 transfers to Mr. Sherwood.

20 Q. Okay. There's also some, I think, some handwritten
21 notations on these documents. Is that your handwriting?

22 A. Yes, it is.

23 Q. I'll move for --

24 A. Just correlating to the front page that I made.

25 Q. All right. And this document, did you present this to the

1 government on Friday of last week?

2 A. Yes.

3 MR. MEKARU: I move the admission of
4 Exhibit Number 25.

5 THE COURT: Mr. Tracy.

6 MR. TRACY: No objection, Your Honor.

7 THE COURT: It's admitted.

8 MR. MEKARU: Okay.

9 Q. (BY MR. MEKARU) Now, Mr. Mickelson, you had just
10 testified that there was another \$25,000 that you had forwarded
11 on to Mr. Sherwood from the investment by Mr. Clyde.

12 A. Correct.

13 Q. Is that reflected on your summary on that spreadsheet?

14 A. No, it is not. I only put on this particular spreadsheet
15 what I had supporting documents from my bank.

16 Q. So similar to the spreadsheet you had for Mr. Edwards, if
17 we flip back to page 2, the first item there --

18 A. Yes, that first line shows \$500 that was transferred to
19 Bryce Sherwood.

20 Q. Was this a wire transfer?

21 A. Yes. All of these are wire transfers.

22 Q. Okay. So that first one was \$500. And then as you go
23 through your summary here, that increases in the next one to
24 \$7,500?

25 A. Correct.

1 Q. With the same sort of detail on your bank statement
2 showing the recipient?

3 A. Yes, "BS" refers to Bryce Sherwood. BS1, BS2, BS3 to
4 coincide with the first page.

5 Q. "BS," I'm sorry, that's your handwritten notation --

6 A. Yes.

7 Q. -- in the upper -- and back out of it so we see the whole
8 document -- up in the upper right-hand corner?

9 A. Yes.

10 Q. Okay. So, Mr. Mickelson, how much money in total did you
11 transfer to Mr. Sherwood?

12 A. That I have supporting documentation on, 166,750.

13 Q. And then -- but based upon your recollection there was
14 another \$25,000 that went to him?

15 A. Yes, that's correct.

16 Q. All this money that you're transferring to him, did it all
17 come or was it all related to this investment?

18 A. Yes.

19 Q. So if Mr. Sherwood were to deny ever getting any money
20 from you, you have documentation to support the fact that you
21 actually did give him money?

22 A. That's correct.

23 Q. Um, the dollar amounts -- can we go back to page 1,
24 please? These dollar amounts that were being forwarded on or
25 being sent to Mr. Sherwood, are you deciding how much money

1 goes to Mr. Sherwood?

2 A. I can see in all the \$25,000 ones this was definite
3 instruction from Mr. Heshelman. There may be some latitude as
4 to amounts, smaller amounts. But I would say generally
5 speaking this is instruction by Mr. Heshelman.

6 Q. Now, you said initially. It sounded like you said
7 initially the money was mostly coming through you and then at
8 some point there was an overlap of money coming from you and
9 directly from Mr. Heshelman, and then eventually were the
10 monies coming directly from Mr. Heshelman?

11 A. Yes. For about a six-month period or so monies were
12 coming through me to Mr. Sherwood, and then after that period
13 there were monies that were coming from Mr. Heshelman and
14 myself to Mr. Sherwood. And then eventually only from
15 Heshelman to Mr. Sherwood.

16 Q. Why? Why this flow of money through you?

17 A. Again, it was the instructions of Mr. Heshelman.

18 Q. Well --

19 A. And there was more to it than that. It was because I
20 brought in Mr. Sherwood, so basically it was a situation where
21 I was in charge of Mr. Sherwood at that point for
22 distributions. So it was -- the reasoning was that I had
23 brought him forward.

24 Q. So you were essentially responsible for him?

25 A. Yes.

1 Q. Now, you had mentioned some other names earlier. A
2 Mr. Bill Green.

3 A. Yes.

4 Q. And a Mr. Robert DeTour, DeTour, D-E-T-O-U-R?

5 A. Yes, I believe that's correct.

6 Q. Okay. Were any of the monies that came from Mr. Oliver or
7 Mr. Edwards sent to Mr. Green or Mr. DeTour?

8 A. Yes.

9 Q. Why?

10 A. To compensate them for their role in this.

11 Q. Because they did the introduction?

12 A. Yes.

13 Q. Can you give us any -- some sort of sense as to how much
14 money Mr. Green and Mr. DeTour were getting?

15 A. I believe Mr. Green got less than \$5,000. I don't have
16 that spreadsheet that I had handwritten with me. But
17 Mr. Detour -- I gave you amounts that I have supporting
18 documentation on, but there were additional amounts that I can
19 remember approximately, but I can't give you exact amounts on.
20 The ones that I disclosed to the Court here or to you were
21 exact amounts and exact dates. Others, Mr. DeTour, I believe
22 would be in the range of about \$50,000 or more.

23 Q. Okay.

24 A. Mr. Green less, like 5,000.

25 Q. All right. Now, going back to Mr. Ramsey's money. Let's

1 go back to I think we're 12D. All right. 5-22-2000, there's
2 \$140,000 again going to you, and then it looks like on
3 June 8th, 2000, another \$1,438,560 coming in from Mr. Ramsey.

4 So Mr. Ramsey's total participation was in the
5 neighborhood of 2 1/2 million dollars?

6 A. Yes.

7 Q. Of that \$140,000 that went to you, you said that some --
8 of total monies that came to you, you said some of that went
9 back to Mr. Edwards?

10 A. Yes.

11 Q. There's \$10,000 on May 16th, 2000, going through
12 Joseph Rosati Realty, Inc.

13 Do you know anything about Joseph Rosati Realty?

14 A. Yes, I talked to Joseph Rosati a few times myself, and
15 this is a friend of Mr. Heshelman's.

16 Q. Did Mr. Rosati have any participation or role with respect
17 to those gold bonds you were first talking about?

18 A. Yes.

19 Q. Can you explain that for us?

20 A. They were returned to me through Joseph Rosati.

21 Q. And help me out here. So those gold bonds --

22 A. I did not talk to him initially about the bonds, but I did
23 talk to him a few times and knew that he had some participation
24 with that and that those bonds were returned from Mr. Heshelman
25 to myself through Joseph Rosati.

1 Q. Okay. That's what I wanted to clarify. So those bonds
2 went from Mr. Heshelman through Mr. Rosati back to you.

3 All right. So the next investor, who was that?

4 A. Stephen Williams.

5 Q. Now, who found Mr. Williams?

6 A. Again, this was Bryce Sherwood.

7 Q. Did you have any conversation with Mr. Williams about the
8 investment?

9 A. No.

10 Q. Did you have any conversations with a Pierre LaBauve?

11 A. No, not that I remember.

12 Q. Did you ever speak to Mr. Heshelman about this Williams
13 investor or this investment by Mr. Pierre LaBauve?

14 A. If I did, it was limited. I didn't know that there was
15 monies coming out. Mr. Heshelman would call me and tell me
16 that we'd gotten another one and he was sending me money. So
17 at times I wasn't privy to all the information, but I was
18 always known that -- when an investor came in and that I was
19 paid.

20 Q. So if we return to I think it's 12E.

21 A. 12E?

22 Q. Yes. Actually you can see it up on the screen as well.

23 A. Okay. I'm better off here. 12E. Joint investor? No.

24 12 --

25 Q. Are you at 12E?

1 A. No. I am now. I believe I'm at 12. It says
2 "Stephen Williams"?

3 Q. Yes.

4 A. Okay. I'm there.

5 Q. Okay. All right. So you did in fact actually get some
6 money from Mr. Williams' participation?

7 A. That's correct.

8 Q. It looks like \$20,000 plus another \$140,000?

9 A. Yes.

10 Q. But if you didn't have any contact with Mr. Williams, why
11 are you still getting money?

12 A. I had brought in Bryce Sherwood, and my initial agreement
13 was that I would be paid on every investor whether Mr. Sherwood
14 brought them in or I brought them in.

15 Q. All right. Who was the next investor?

16 A. Alan Moody, I believe. There might have been one other
17 person, but Alan Moody.

18 Q. All right.

19 A. I don't see it here.

20 Q. Alan Moody's spreadsheet may be 12A.

21 Go forward in the book. The other direction. Nope, the
22 other direction.

23 A. I'm there.

24 Q. All right. Who presented Mr. Moody with this investment
25 fraud?

1 A. Mr. Sherwood did, but I helped in a reference capacity,
2 and I did talk with Alan Moody. This is one investor that I
3 had some direct conversations with.

4 Q. All right. What did you tell Mr. Moody?

5 A. I'd like to just back that up a second and say that
6 Mr. Sherwood asked me to be able to speak with Mr. Moody, that
7 he's a potential investor, and asked to -- if I would give a
8 reference for him and speak with Mr. Moody to further his
9 investment.

10 Q. Okay. Well, what was -- what was your role supposed to be
11 in this reference call?

12 A. Basically a satisfied investor. I gave Mr. Sherwood -- I
13 told him that I would do this. And Alan Moody called me, and I
14 talked to him for approximately 15 minutes, and in that
15 conversation Mr. Moody asked me a number of different
16 questions. Had I known Mr. Sherwood. And I told Mr. Moody
17 that I did know Mr. Sherwood, that he was capable, that I had
18 placed money with him, and that I had received monies back with
19 profits and it had gone well. And I had received the monies
20 back in a timely fashion. In other words, according to the
21 agreement.

22 Q. Was any of that truthful?

23 A. No.

24 Q. So you essentially lied to Pastor Moody?

25 A. Yes, I did.

1 Q. Did you speak with Michael Heshelman about Alan Moody's
2 investment?

3 A. Yes, I certainly talked to him at the time I was paid. I
4 talked to Mr. Sherwood also after that conversation that I had
5 with Mr. Moody to confirm that I had talked to Mr. Moody and
6 had given him a good reference.

7 Q. Now, we have up on the screen here 12A. It shows the
8 monies coming in from Pastor Moody and then the transactions
9 that happened shortly after the money came in.

10 Do you have any knowledge of Thornbrook International?

11 A. No.

12 Q. Or a man by the name of Brian Turner?

13 A. No. I've heard his name, but beyond that, no, I haven't.

14 Q. As far as you know, did you or Mr. Sherwood participate at
15 all in presenting this investment to Mr. Heshelman?

16 A. Say that again, please.

17 Q. Did you or Mr. Sherwood participate at all in presenting
18 this investment fraud to Mr. Turner?

19 A. Mr. Turner. I did not.

20 Q. Okay.

21 A. I cannot speak for Mr. Sherwood.

22 Q. Well, did he ever tell you that he was presenting this to
23 somebody else so that you'd get a percentage of or some portion
24 of it?

25 A. Yes, I believe the name did come up.

1 Q. With Mr. Sherwood?

2 A. From Mr. Sherwood, yes.

3 Q. But did you ever get any money, as far as you know, as it
4 relates to Mr. --

5 A. No, I don't believe so. Unless I'm wrong. Maybe I lost
6 it here, but I don't believe so.

7 Q. Okay.

8 A. I remember receiving two amounts on Alan Moody.

9 Q. Okay. Well, we'll come back to Mr. Turner and his bank
10 records. But would you -- if Mr. Sherwood had presented this
11 to Mr. Turner, would you be surprised at all if he received any
12 money as it relates to Mr. Turner?

13 A. No. I mean, that would be part of the agreement.

14 Q. Okay. And it would be consistent for you to get some
15 share?

16 A. Yes. Yes.

17 Q. Now, you've gone through this list of individuals
18 receiving money with the government, correct?

19 A. With Alan Moody, yes. With Alan Moody, yes.

20 Q. Okay. And many of these, would it be fair to say, you
21 don't really recognize?

22 A. That's correct.

23 Q. All right. But you do -- did you recognize the name of
24 Pablo Ramirez?

25 A. Yes, I did.

1 Q. All right. I think Mr. Ramirez might be right in the
2 middle here, the \$5,000. Do you see that?

3 A. Yes. Yes. Excuse me, I'm . . .

4 Q. That's all right. I just wanted to make sure we're all on
5 the same page here.

6 A. Yes. Yes, certainly.

7 Q. What was your understanding as to who Mr. Ramirez was?

8 A. He was a friend of Mr. Heshelman's.

9 Q. All right. There's also a transaction, I think it's on
10 page 2, that goes to Mr. Tringham?

11 A. Yes.

12 Q. \$5,000.

13 A. Yes, I see that.

14 Q. Did you know Mr. Tringham?

15 A. Yes, I did.

16 Q. What was your understanding about who Mr. Tringham was?

17 A. Mr. Tringham was somebody that I had introduced to
18 Mr. Heshelman, and subsequently he struck up a relationship
19 with him. I had established a relationship with Mr. Tringham
20 before that, and I had presented Mr. Tringham with several
21 investors and have learned some knowledge of private placement,
22 et cetera, from Mr. Tringham.

23 Q. So was Mr. Tringham somebody who was going out and finding
24 investors, or was Mr. Tringham someone who was presenting
25 himself as a sophisticated investor who would be able to invest

1 other people's money?

2 A. As a sophisticated person who was capable of placing
3 investments with him.

4 Q. More akin to Mr. Heshelman's?

5 A. Yes.

6 Q. All right. Did you make any unilateral decisions about
7 how much money would come out of the attorney trust account
8 that -- originally from Pastor Moody?

9 A. No.

10 Q. Who made the decision about where did all the money go?

11 A. Mr. Heshelman.

12 Q. Did you ever speak with his attorney, Ken Warner?

13 A. Yes, on at least two occasions. Again, to confirm amounts
14 that were coming out to me.

15 Q. Did you ever ask Mr. Warner to send you money and to
16 decide yourself how much money you wanted to get?

17 A. No. I would not have had that authority.

18 Q. Mr. Mickelson, now, would it be fair to say this isn't the
19 first time that you've run through this chronology with the
20 United States Attorney's Office and with the government; is
21 that true?

22 A. Yes. Correct.

23 Q. All right. You've met before with your attorney, with
24 Agent Wetherbee, and even myself?

25 A. Yes.

1 Q. The first time we went through this were you as candid and
2 as detailed about providing all of the information you've
3 provided today?

4 A. No.

5 Q. Was this a bit of a process?

6 A. Yes, it was.

7 Q. Okay. So would it be really kind of fair to say that
8 initially you might have been minimizing or maybe even lying
9 about the full scope of your conduct?

10 A. Well, it took me a while really to understand my total
11 role in this, and I was kind of a little bit blind in some of
12 it. But I had to reflect and think and go back and look at
13 some of my documents, et cetera, and to see that I -- what my
14 full role in this was.

15 Q. In addition to the activities you described here that you
16 were engaging in with Mr. Heshelman, have you also engaged in
17 other activities where you've been receiving money from
18 individuals? Substantial amounts of money, not just pocket
19 change.

20 A. Are you referring to -- I did some currency investments
21 with Mr. Sherwood. Are you relating to that?

22 Q. Yes. So you've been involved in other investment-type
23 activity?

24 A. Yes.

25 Q. That's with Mr. Sherwood?

1 A. Yes.

2 Q. Would it be fair to characterize this in the time frame of
3 2003/2004 that you may have been involved in finding people and
4 bringing people to Mr. Sherwood where Mr. Sherwood would engage
5 in some sort of currency trading?

6 A. Yes, that's correct.

7 Q. Now, were there accounts actually open for these customers
8 or these investors?

9 A. Yes, that's correct, there were accounts that were opened
10 up in Gain Capital and one other trading house, currency
11 trading house.

12 Q. And were these investors given monthly account statements
13 about the activities going on in their accounts?

14 A. Yes.

15 Q. And was there actually, in fact, currency trading activity
16 going on?

17 A. Yes.

18 Q. Who was managing the currency trading?

19 A. Bryce Sherwood and one other trader at Mr. Sherwood's --
20 basically Mr. Sherwood was in control.

21 Q. All right. Now, were there approximately four people?

22 A. Yes, that's correct.

23 Q. And there was a Mr. Pinney, Charles Pinney?

24 A. Yes, he was. He was involved on one account, yes.

25 Q. All right. Mr. Caslov?

1 A. Yes.

2 MR. MEKARU: Your Honor, I'm going to lead just, if I
3 may --

4 THE WITNESS: And Chris Smith and Barry Kennedy.

5 Q. (BY MR. MEKARU) Okay. Was their trading activity
6 lucrative or financially successful for them?

7 A. No, currency trading is up and down, but ultimately they
8 lost their money.

9 Q. Lost all their money?

10 A. Just about, yes.

11 Q. Any sense as to in total how much money these four people
12 invested?

13 A. \$100,000 each.

14 Q. For a total of \$400,000?

15 A. Yes, I would say that that's quite accurate.

16 Q. And, excuse me, how much were you paid for finding these
17 investors?

18 A. I was paid a commission out of the trading which totaled
19 \$1,500.

20 Q. And how was Mr. Sherwood being compensated?

21 A. The same way. I don't know the exact amounts he was being
22 compensated. He was in charge of that particular situation.

23 Q. Okay. And those investments, were they -- those investors
24 you said were given monthly account statements as far as you
25 know.

1 Were the investments that we were talking about earlier
2 with Mr. Ramsey, Mr. Oliver, Mr. Clyde, Mr. Moody, as far as
3 you know were any of those people given any sort of monthly
4 account statements --

5 A. No.

6 Q. -- about the activity in their accounts?

7 A. Not to my knowledge.

8 Q. All right. And as I understand, you may have also again
9 found more investors, more individuals for Mr. Sherwood more
10 recently in 2008?

11 A. That's correct.

12 Q. Another four people?

13 A. Yes.

14 Q. Who were they?

15 A. Paul Fanuken, Kevin O'Brien, Peter Mosaro, and a close
16 friend of Paul Fanuken. It was Frank and Kathleen, and I
17 cannot remember their last name at the moment.

18 Q. And roughly how much money did they in total invest with
19 Mr. Sherwood?

20 A. Kevin O'Brien put in a hundred thousand dollars and then
21 later put an additional 25,000. Paul Fanuken put in 50,000.
22 His friends, close friends put in 50,000. And Peter Mosaro
23 also put in, from what I remember, 50,000.

24 Q. And what was -- do you have any understanding of what
25 their -- what sort of financial success or losses may have

1 occurred?

2 A. At first it was successful. Mr. Kevin O'Brien's account
3 went up to \$190,000 and then it started to drop. And he ended
4 up with an account final balance of around 85 or 90 thousand
5 dollars.

6 The other individuals put in fifty, and they ended up with
7 about \$40,000 in their accounts.

8 Now, I did tell the people I had more control over the
9 situation this time and told them to be mentally prepared for
10 up to a 20 percent loss, and if they incurred a 20 percent
11 loss, to stop trading and pull out. So in the initial stages
12 they were making money, they were happy, and then there was a
13 reverse, as does happen in currency, and so I told them to put
14 a hold on their accounts and to pull their money out.

15 Q. How much money were you compensated in total for this 2008
16 trading activity?

17 A. \$1,500.

18 Q. Now, in addition to the accounts that Mr. O'Brien had with
19 Mr. Sherwood, did he also engage in some trading activity
20 directly with you?

21 A. Yes. There was one other individual that I tried as a
22 trader, and Kevin O'Brien had put up a hundred thousand
23 dollars. And there was also currency trading, and I advised
24 that he stop trading after about three to five days. His
25 account balance ended up being 93,000.

1 Q. So he lost \$7,000?

2 A. Yes.

3 Q. Did you get any -- how much did you get in total in terms
4 of compensation for that?

5 A. Nothing.

6 Q. All right. Now, separate from Mr. Sherwood, have you
7 yourself also had -- have you also received monies from
8 individuals?

9 A. Yes, I had done a transaction with Martha Granger some
10 years back, and she invested \$50,000 in a startup company, and
11 later on after -- years later she -- I'd still been in contact
12 with her. She offered to lend me a thousand dollars, and I
13 took that loan, and I'm presently paying it back in small
14 monthly payments.

15 Q. So there were two transactions with Martha Granger?

16 A. Correct.

17 Q. A thousand-dollar loan and this \$50,000 invested in an
18 Internet company?

19 A. Correct.

20 Q. Did you actually receive those monies, or did you just
21 pass them along?

22 A. The investment with the Internet company, I did not --
23 that monies was not directed to me, nor did I make any money on
24 that at all. So it was an investment into a startup company.

25 Q. As far as you know did the money actually go to that

1 startup company?

2 A. Yes.

3 Q. But has Ms. Granger filed some sort of complaint regarding
4 the \$50,000?

5 A. Yes.

6 Q. In addition, have you borrowed money from other people?

7 A. Minor amounts of money from my family.

8 Q. All right. Have you borrowed -- did you borrow money from
9 Jeff English?

10 A. Yes, I did, as a matter of fact.

11 Q. How much money?

12 A. I borrowed \$12,500 from Jeff English.

13 Q. Did you pay him back?

14 A. Yes, I did.

15 Q. How much money did you pay him back?

16 A. \$22,500.

17 Q. Was that consistent with the terms of your agreement?

18 A. Yes, it was.

19 Q. Did you -- in paying him back, did you receive any monies
20 from Mr. Heshelman or Mr. Sherwood to assist you in paying him
21 back?

22 A. Yes, that was actually above the 22,000 -- I paid him
23 about 22,600 or seven hundred dollars. There were some
24 amounts, small amounts that Mr. Heshelman directed to
25 Jeff English on my behalf of about \$350 and \$450 on two

1 different occasions about two or three years ago.

2 Q. Why?

3 A. I asked them. I was being pressured by Jeff English; I
4 asked them to assist.

5 Q. I'm sorry, asked who to assist you?

6 A. I asked Michael Heshelman to help me.

7 Q. When was that?

8 A. Two, three years ago.

9 Q. Also, did you borrow money from a Davis Baldwin?

10 A. Yes, I did.

11 Q. How much money?

12 A. \$25,000.

13 Q. Have you paid him back?

14 A. No, not really. I've been making small monthly payments
15 at this point.

16 Q. How much did you agree to pay Mr. Baldwin for that loan?

17 A. I agreed to pay him back \$50,000.

18 *THE COURT:* Mr. Mekar, we're now more than --
19 getting close to an hour and a half of your direct. We're at
20 the noon hour, and I'm wondering how close we are and what we
21 can expect in terms of looking at a noon break.

22 *MR. MEKARU:* Your Honor, I'm pretty close here. I'm
23 just covering essentially all other potential Giglio-type
24 material with the witness.

25 I have one other area I want to cover. It will

1 probably take about five minutes.

2 *THE COURT:* Okay.

3 Q. (BY MR. MEKARU) Tina Ruby.

4 A. Yes.

5 Q. Tell us about Tina Ruby.

6 A. I had introduced Tina Ruby to Mr. Heshelman last year.

7 Q. What was the nature of the introduction?

8 A. She had some bank instruments that she said that she had
9 access to, and Mr. Heshelman said that he could perhaps sell
10 the instruments or buy them, buy the instruments. Or arrange
11 for their purchase.

12 Q. Were these legitimate documents or fraudulent documents?

13 A. I believe they were fraudulent.

14 Q. And as far as you know, did anything really happen with
15 respect to that?

16 A. No, it did not.

17 Q. All right. And did you, separate from Mr. Heshelman, have
18 any other participation with Tina Ruby?

19 A. Yes, I had received a gold offer from Tina Ruby which I
20 forwarded on to an associate Linda Johnson, and nothing
21 happened. It was a commodity.

22 Q. The gold offer, any sense of whether that was legitimate
23 or fraudulent?

24 A. I cannot tell.

25 Q. And the forwarding on to Linda Johnson, was Linda Johnson

1 somebody else who was interested in these fraudulent activities
2 or more legitimate?

3 A. No, she was totally commodities. She would buy and sell
4 sugar. She would -- it's totally legitimate from what I can
5 understand.

6 MR. MEKARU: Your Honor. Thank you. We'll pass the
7 witness.

8 THE COURT: Thank you, Mr. Mekar.

9 Ladies and Gentlemen, we'll now take our
10 much-deserved-and-needed noon break. I remind you once again
11 please do not discuss anything that you've heard or seen.
12 Don't reach any conclusions. If you run into anybody involved
13 in this case, please do not engage with them in any way. No
14 research or anything of that nature.

15 And it's now a little bit after noon. Let's be back
16 and ready to start promptly at 1:30. Thank you.

17 You may step down, Mr. Mickelson.

18 THE CLERK: Everyone rise, please. This Court stands
19 adjourned.

20 *(Recess taken at 12:05 p.m.)*

21 *(Jury entered the courtroom at 1:31 p.m.)*

22 THE COURT: Mr. Tracy, I think you're up.

23 MR. TRACY: Thank you, Your Honor.

24 THE COURT: Mr. Mickelson, you're still under oath
25 from this morning.

1 THE WITNESS: I understand.

2 CROSS-EXAMINATION

3 BY MR. TRACY:

4 Q. Good afternoon, Mr. Mickelson.

5 A. Good afternoon.

6 Q. I'm Chris Tracy. I represent Mr. Heshelman.

7 We've never spoken before, have we?

8 A. No, we have not.

9 Q. I don't think we've met before as far as I'm aware.

10 A. That's correct.

11 Q. If we could start with Government Exhibit 12H, and I'll
12 start to ask some questions as it comes up to the screen.

13 Just so you're -- I noticed on direct you were maybe
14 fishing around for things a little. Tab 8 -- tab 12 is all of
15 the exhibits for that. There's not a tab H and so forth, so
16 you just have to sort of find it as the government put it in
17 there.

18 So you're at 12H?

19 A. Yes.

20 Q. Tell me when you are.

21 A. Yes, that's correct.

22 Q. Okay. Now, I believe besides testifying here today you
23 also testified before the grand jury in this matter, correct?

24 A. That's correct.

25 Q. And I've had the chance to -- I get a copy of the

1 transcript before you take the stand, so my recollection in
2 reviewing your testimony before the grand jury was you thought
3 you had received somewhere in the total amount of 900,000 to
4 1.2 million of monies out of the investments we've been talking
5 about. Is that your recollection in terms of your testimony?

6 A. Yes, I was talking in there about final amounts that I
7 ended up with.

8 Q. Final amounts that you ended up with.

9 A. Correct. There were distributions that were done.

10 Q. Okay. So that was what your testimony was back in '06
11 when you testified before the grand jury?

12 A. I believe that's correct.

13 Q. Okay. And when we look at Government Exhibit 12H, the
14 first page shows out of one of the Ken Warner accounts \$430,000
15 coming to you, correct?

16 A. Yes.

17 Q. And when we go to page 2, we see I believe it's the funds
18 that also came from the other Ken Warner account, and that's
19 almost another 1.1 million you see at the bottom?

20 A. I believe this -- yes, that's correct.

21 Q. Okay. And then when you total the two of those, you're
22 above one and a half million dollars in total, correct?

23 A. Yes, that's correct.

24 Q. So if I understand, sort of combining your grand jury
25 testimony to what we're saying now, you're not disputing that

1 one and a half million dollars in total came to you?

2 A. No.

3 Q. But then you're saying something like another three, four,
4 five hundred thousand dollars were paid out to others?

5 A. Correct.

6 Q. And is that consistent with Government's Exhibit 25 and 26
7 you went over earlier today, monies that went to Sherwood and
8 others?

9 A. I believe that would be correct.

10 Q. Okay. But you still came away with somewhere in the
11 neighborhood of 900,000, a million dollars, something like
12 that?

13 A. Yes, that's correct.

14 Q. And I take it you used that to pay off bills and do other
15 things with, correct?

16 A. Yes.

17 Q. Did you owe other people money?

18 A. Yes, I did.

19 Q. And you paid certain monies to them?

20 A. Yes.

21 Q. Did you buy a big house with it at all?

22 A. No.

23 Q. We heard that from Mr. Sherwood.

24 A. No.

25 Q. No?

1 A. No.

2 Q. I take it you also have not paid any money back to any of
3 the investors that you brought into this investment?

4 A. There were minor amounts of monies that were directed to
5 Charles Pinney that were given back to Alan Moody.

6 Q. That were given to Alan Moody?

7 A. Yes. Supposedly. I had no verification of that.

8 Q. Through Charles Pinney?

9 A. Yes.

10 Q. That's what was supposed to happen?

11 A. Yes.

12 Q. But you're not sure whether it actually occurred?

13 A. I did not talk to Mr. Moody about that, no.

14 Q. Okay. Other than that, no other monies paid back to any
15 investors?

16 A. Correct.

17 Q. Now, in your mind did you do anything to earn that money,
18 the 900,000, a million dollars, whatever you got?

19 A. Legally, no.

20 Q. Okay. Were you supposed to be doing something in terms of
21 work on the investments or anything? Were there any projects
22 that you were supposed to be working on?

23 A. Not that I remember. I was finding -- I was an investment
24 finder.

25 Q. Okay. And from -- this all started roughly in 1999, I

1 take it?

2 A. Yes.

3 Q. And for that matter, you didn't become aware of the
4 indictment or allegations against you until when, late '08?

5 A. No. That's correct. I mean, I went to the grand jury in
6 2006, and nothing formally happened that I was charged until
7 December of last year, 2008.

8 Q. Okay. But you're saying your efforts with respect to
9 trying to help with any investment platforms or anything
10 essentially were nothing from the year '99 through 2008?

11 A. Except for the introduction to -- with Tina Ruby.

12 Q. To Tina Ruby?

13 A. Yes.

14 Q. And that's when Mr. Heshelman was over in Europe?

15 A. That's correct.

16 Q. Okay. We'll come back to that one.

17 A. At least that's the best recollection I have.

18 Q. Okay. And then some of this was gone over, but I want to
19 just make sure we cover it fully.

20 Monies did go to -- from you to Mr. Sherwood, correct?

21 A. Yes, that's correct.

22 Q. And I believe that one is Government Exhibit 25 if we
23 could bring that up. Do you have that?

24 And the summary page here on the front, we don't need to
25 go into the detail behind it at this point, shows this almost

1 167,000, correct?

2 A. Correct.

3 Q. And then based on your memory, in addition to that another
4 25,000 went to Mr. Sherwood, but you didn't have paperwork to
5 verify that?

6 A. That's correct.

7 Q. So are you aware that Mr. Sherwood testified in this case
8 last week?

9 A. Yes, I am.

10 Q. And his testimony was he didn't receive any money from
11 you?

12 A. I wasn't here, but from what I understand, that is his
13 testimony.

14 Q. So he lied?

15 A. Yes.

16 Q. And you're clear as punch and you have some of the -- most
17 of the ones you have backup for in terms of transfers from you
18 to him --

19 A. I have --

20 Q. -- to support the monies that you transferred to him,
21 correct?

22 A. Yes.

23 Q. Now, at least initially, and then perhaps for some period
24 of time regarding the investment platforms, trading platforms
25 that were being discussed, your belief was that those

1 platforms, in fact, could work, correct?

2 A. No. No, I had discussions with Mr. Heshelman back at the
3 beginning of this that I could not nor could he produce any
4 evidence that these trading programs were real.

5 MR. TRACY: Okay. Your Honor, may I approach the
6 witness?

7 THE COURT: Yes.

8 Q. (BY MR. TRACY) Okay. I want to hand you a copy, sir, of
9 your grand jury testimony from January 26, 2006, and there's
10 probably times we'll go through different sections of that.

11 A. Okay.

12 Q. So you did testify before the grand jury?

13 A. Yes.

14 Q. And you were sworn under oath that day as well, correct?

15 A. Yes.

16 Q. And you understood that you were required to tell the
17 truth and the complete truth, correct?

18 A. Yes.

19 Q. Just like the same oath you took today?

20 A. Yes.

21 Q. And so on page 12 -- and you can read as much as you want.
22 I'm just going to take you to a point. If you need to go back
23 and take a second, you take your time.

24 Mr. Mekaru, he was asking you questions that day before
25 the grand jury, right?

1 A. Yes.

2 Q. And he asked roughly beginning around line 11, he says --
3 well, let's go back to line 5 because we're talking about
4 Mr. Edwards here, and you talked about him on your direct,
5 correct?

6 A. Yes.

7 Q. And now -- he says -- so this is probably the same
8 Mike Edwards you talked about during your direct?

9 A. Yes.

10 Q. So Mr. Mekaru asked you, "Okay. Now, was Mr. Edwards your
11 client that you introduced to Mr. Heshelman?"

12 Do you see that?

13 A. Yes.

14 Q. And you answered, "No, he was not a client. No, not
15 per se. I was not doing business or the term that he was a
16 client of mine."

17 Do you see that?

18 A. Yes.

19 Q. In other words, you didn't really consider him to be a
20 client; you were making an introduction on his behalf. Is that
21 what you're explaining?

22 A. Yes, I was the introducing party, but I also did outline
23 to Mr. Edwards what I had discussed with Mr. Heshelman.

24 Q. Okay. But -- and you're drifting from the mic a little
25 bit.

1 A. Oh, I'm sorry. I'm trying to read this.

2 Q. If you go to the paper, take the mic with you so we can
3 hear you. And I'm not trying to be rude. I'm just trying to
4 make sure everybody can hear.

5 A. Thank you.

6 Q. Just for this purpose before we move on, you just didn't
7 consider him as really a client, you were making an
8 introduction between Mr. Edwards and Mr. Heshelman and
9 whomever, correct? Is that what you were trying to explain?

10 A. Yes.

11 Q. Okay. Now, on line 9 Dan continues, "But you were the
12 individual that introduced" -- and then I don't know if there
13 was -- it sort of gets cut off there. And then you say, "I
14 was" -- the answer is, "I was the introducing party." Right?

15 A. Yes.

16 Q. And you agree with that?

17 A. Yes.

18 Q. And then the next question is: "Okay. Now, as an
19 introducing party, had you done any sort of evaluation of
20 Heshelman's investment opportunity to see whether it was a good
21 one or not?"

22 Do you see that?

23 A. Yes.

24 Q. And your answer was: "I was convinced that Mr. Heshelman
25 was capable of doing what he said he could do." Correct?

1 A. Yes.

2 Q. All right. And then it goes on from there, and then
3 you're welcome to continue to read it, but I'm going to take
4 you to the next page. And there continues to be questions
5 about sort of what the financial plan is, right?

6 A. Yes.

7 Q. And then about line -- maybe around line 13 he's following
8 up about the financial plan, and Dan asks you: "Why is that?"
9 And you say, answer at 14, "Well, I don't remember
10 specifically, but I will try and do my best to be able to tell
11 you what I remember. More than likely it was some type of bank
12 paper."

13 Do you see that?

14 A. Yes.

15 Q. So you're talking with him about what the investment
16 opportunity, as best as you can recall, would involve?

17 A. Yes.

18 Q. Okay. And then Dan says, "I'm sorry." And then you
19 answer at 18, "More likely it was some type of bank paper.
20 Buying and selling of some sort of bank paper."

21 Do you see that?

22 A. Yes.

23 Q. And again is it fair to say on that part of whatever
24 transactions were being planned, that wasn't where
25 Dennis Mickelson was supposed to do -- make any effort,

1 correct? You were only supposed to introduce people to the
2 concept?

3 A. I was the introducing party, correct.

4 Q. Okay. And then on 21 Dan asks: "I don't know. I did not
5 have the connection" -- excuse me. 20, Dan asks: "Okay. What
6 sort of bank paper?"

7 21, you say, "I don't know. I did not have the
8 connections that Michael Heshelman had."

9 Do you see that?

10 A. Yes.

11 Q. And then he asks, "And yet you introduced this investment
12 to," and then the question sort of gets broken off. And your
13 answer is: "Yes, I did. Mr. Heshelman did convince me that he
14 was capable of doing what he said he could do."

15 Do you see that?

16 A. Yes.

17 Q. And that was your testimony before the grand jury,
18 correct --

19 A. Yes.

20 Q. -- back in 2006?

21 A. Yes.

22 Q. Now, I believe you indicated that one of the introductions
23 that you made to Mr. Heshelman in terms of an investor was
24 Tim Oliver and the Prism Mortgage stuff, correct?

25 A. Yes.

1 Q. And was it your understanding that Mr. Oliver is or was an
2 attorney?

3 A. Yes.

4 Q. I believe he's from Minnesota. Right?

5 A. Yes.

6 Q. Okay. And you knew he was an attorney?

7 A. Yes.

8 Q. And you made that introduction directly, or did you go
9 through anybody else, an intermediary to Mr. Oliver?

10 A. Yes, it was Robert DeTour and Bill Green.

11 Q. Okay. So those are the people you spoke about during your
12 direct?

13 A. Yes.

14 Q. And how did you happen to know those folks?

15 A. I discussed some bonds with them, historical bonds.

16 Q. Historical bonds?

17 A. Yes.

18 Q. Some of the bonds like we heard about during your direct?

19 A. Yes.

20 Q. So we'll come back to that as well.

21 Now, is it my understanding that for purposes of the
22 Oliver transaction that ended up being -- wasn't that one that
23 was about 1,080,000?

24 A. Yes.

25 Q. Did you indicate you received somewhere in the

1 neighborhood of \$10,000 for that introduction?

2 A. No, I did not.

3 Q. You didn't receive anything?

4 A. No, that's not my statement.

5 Q. Okay. What was your statement?

6 A. My statement -- I'd like to amplify my statement. What I
7 had testified to was that Mr. Oliver had put in \$320,000
8 initially, of which I received \$10,000.

9 And the second time he put \$720,000 in; I received a
10 minimum of approximately \$40,000.

11 Q. Okay. So the first time it wasn't 360 but it was 320?

12 A. 360.

13 Q. Because I just heard you say 320.

14 A. Excuse me.

15 Q. 360. And then you would have got 10 grand?

16 A. Yes.

17 Q. And then a second tranche or transaction came from him of
18 720?

19 A. Yes.

20 Q. And that one you got somewhere in the \$40,000 range?

21 A. Correct.

22 Q. Okay. So the total that came to you vis-a-vis the Oliver
23 transaction was somewhere in the neighborhood of 50,000,
24 correct?

25 A. Yes, I would say that's correct.

1 Q. Okay. So can we bring up Government Exhibit 12B, please.
2 And you're welcome to go to it there as well.

3 Now, you may have looked at 12B on your direct. I'm
4 sorry, I don't remember all the ones that you've looked at.

5 But, again, I think as Mr. Mekaru explained to you on his
6 direct, these are summary charts that you've seen before that
7 the government has created related to monies flowing out of
8 Mr. Warner's accounts, correct?

9 A. Give me a second, please, I'm trying --

10 Q. You tell me when you're ready, Mr. Mickelson, and we'll
11 continue on.

12 A. Yes, I'm there.

13 Q. Okay. And my general question to you to begin with is
14 these are summary charts, either this one or other ones similar
15 to it that the government has shown you previously, even before
16 today, either preparing for your grand jury testimony or
17 otherwise, so you've seen these type of charts before, correct?

18 A. Yes.

19 Q. And you understand that one of the -- one of the people
20 working for the government, the FBI or whatever, he's created
21 these charts by going to Mr. Warner's bank statements and other
22 bank-related materials so that he could summarize this
23 information?

24 A. Yes.

25 Q. Okay. So here we have Tim Oliver and Prism Mortgage, and

1 we have payments coming to you, correct?

2 A. Yes.

3 Q. So we see a \$40,000 one, right?

4 A. Yes.

5 Q. Okay. And then is there a second page? And that's
6 consistent with what your recollection is, right?

7 A. Yes.

8 Q. Okay. And then we go to the next page, which is again out
9 of the other account, and about the second one we see a \$10,000
10 wire transfer coming to you, correct?

11 A. Correct.

12 Q. And again, that's consistent with your recollection,
13 right?

14 A. Yes, it seems correct.

15 Q. And then we go down about, oh, roughly 10 more, and we see
16 another \$10,000 coming to you in September of '99.

17 Do you see that? Roughly a little above the middle of the
18 page.

19 A. Yes. Yes. Yes, I see it.

20 Q. Okay. Then we go down a few more past that, and we see
21 another \$5,000 coming to you in October of '99, correct?

22 A. Yes.

23 Q. And now we have them highlighted up here too, if it's
24 easier for you.

25 And then later in October, just a week later we see

1 another 5,000 coming to you, correct?

2 A. Yes.

3 Q. And then later after that we see 32,000 coming to you in
4 November of '99. Correct?

5 A. Yes.

6 Q. And then in -- later in November, a couple weeks after
7 that last one, we see another 30,000 coming to you, correct?

8 A. Yes.

9 Q. Okay. And we'll go to the next page, then.

10 And then here on this one it's just showing monies being
11 returned to Prism, so we don't see your name on this page,
12 correct?

13 A. Yes, I --

14 Q. I don't see your name. Do you see your name anywhere?

15 A. No. I would have to put on my other glasses, but . . .

16 Q. So in actuality based on the Government's Exhibit 12B,
17 somewhere in the neighborhood of \$130,000 flowed from you out
18 of the Oliver transaction, correct?

19 A. There were other investors that came in in between this
20 time that I was compensated for. I wasn't aware of which
21 accounts these are coming out of. I assumed that everything
22 was coming from Ken Warner's account, which I believe is
23 correct.

24 Q. Okay.

25 A. I don't know how these things got assigned, nor did I

1 prepare these, but I was trying to reconstruct the transaction
2 to the best of my ability.

3 Q. I understand. But again, prior to today you've seen these
4 government summary charts before?

5 A. Um --

6 Q. That's what your testimony was just a few minutes ago.

7 A. Yes.

8 Q. Okay.

9 A. I don't remember it being so clear on this particular
10 flowchart.

11 Q. Okay.

12 A. But I know I was given a whole packet of discovery, and at
13 some point in time I did probably scan this at the least.

14 Q. And you do not quarrel with my math, the totals of what
15 we've just looked at add up to well over a hundred thousand
16 dollars, closer to \$130,000 of monies according to the
17 government's chart, not my chart, flowed to you out of the
18 Oliver transactions, correct?

19 A. There must have been other monies that were flowing in.

20 Q. That's not my question. Is my math approximately correct
21 in terms of the government's chart, 12B, of somewhere in the
22 neighborhood of \$130,000 flowed to you? I'm not asking you
23 what the explanation is. I'm saying, do you agree that my math
24 is accurate?

25 A. Yes.

1 Q. Okay. Now, on direct I believe you also indicated that
2 you introduced Mr. Sherwood to Mr. Heshelman, correct?

3 A. Yes.

4 Q. As far as you know, Mr. Heshelman never knew Mr. Sherwood
5 until you made that introduction?

6 A. That's correct.

7 Q. So are you aware of anybody else making an introduction as
8 well as yourself between the two of them?

9 A. Say that one more time, please.

10 Q. In other words, you know, sometimes you and a friend
11 introduce somebody. I'm just trying to make sure that the
12 introduction that occurred between Heshelman and Sherwood, that
13 literally happened on the basis of Mickelson making the
14 introduction.

15 A. Yes, that's correct. There was a referring party, but I
16 made the direct introduction.

17 Q. Okay. And then as you indicated on direct, Sherwood
18 introduced other potential investors to Heshelman?

19 A. Correct.

20 Q. All right. And one of those investors, as you indicated,
21 was Mr. Alan Moody.

22 A. Correct.

23 Q. And then on direct you talked about some of the things
24 that you were involved with as it pertains to Mr. Moody,
25 correct?

1 A. Yes.

2 Q. Including conversations that you had.

3 A. Yes.

4 Q. Now, I take it from your responses on direct, that when
5 you were talking to Mr. Moody, the person that you were
6 vouching for was Mr. Sherwood?

7 A. Correct.

8 Q. Not Mr. Heshelman?

9 A. I was giving a reference -- Mr. Sherwood asked me to be
10 able to give a reference in terms of Moody stepping forward as
11 a potential investor. That happened before the conversation.

12 Q. Okay.

13 A. And what that was for was an introduction to
14 Mr. Heshelman.

15 Q. Did you tell that to Mr. Moody in your conversation?

16 A. No, I did not.

17 Q. So, again, the -- now you've got to bear with me.

18 A. This was one conversation with Mr. Sherwood; one
19 conversation with Mr. Moody.

20 Q. Yeah, but try and listen to my question. I'm sort of --
21 just so I put it in context for you.

22 Mickelson and Moody are having a conversation?

23 A. Yes.

24 Q. The person that you're vouching for, making a reference
25 for during the Mickelson/Moody conversation is Bryce Sherwood,

1 correct?

2 A. Yes.

3 Q. Is that the only name that came up between Mickelson and
4 Moody in their conversation?

5 A. I would have to think about that for a second, if I could
6 pause for a second and think.

7 Q. Any time you need to think, it's fair game. So you just
8 do what you need to do there. That's fine.

9 A. I knew it was going to be a potential investor for
10 Mr. Heshelman, but most of the conversation, if not all of it,
11 was in reference to Bryce Sherwood.

12 Q. Okay. And so as you sit here today, with the
13 Mickelson/Moody conversation -- by the way, let me go to
14 something else for a second.

15 Is this the only conversation you ever had with Mr. Moody?

16 A. Yes, it was.

17 Q. And was it on the phone or in person?

18 A. It was on the phone.

19 Q. Okay. And as far as you were aware, he lives in this area
20 generally? Middleville, Michigan, not too far from here?

21 A. Yes.

22 Q. You were living where at the time?

23 A. I was living in Florida.

24 Q. Okay. And now you're up in Pennsylvania?

25 A. Correct.

1 Q. And at the time that you were living down in Florida, you
2 didn't make a trip up here to meet with Mr. Moody, you just had
3 a conversation with him on the phone?

4 A. That's correct.

5 Q. And as far as you are aware, you didn't have
6 Bryce Sherwood patched into that conversation?

7 A. No.

8 Q. And Michael Heshelman wasn't patched in?

9 A. No.

10 Q. The only two participants were you and Mr. Moody?

11 A. Yes.

12 Q. So now we're going back to that conversation. As best as
13 your recollection is today, you can't say one way or the other
14 whether Mr. Heshelman's name or Investors First name or
15 whatever came up at all during the conversation between you and
16 Mr. Moody; am I correct?

17 A. Yes.

18 Q. And as far as you can recall, Mr. Moody didn't ask you
19 anything directly regarding Mr. Heshelman or his company?

20 A. Yes.

21 Q. Am I correct about that?

22 A. Yes.

23 Q. Now, I thought on direct you said something like you were
24 acting as a reference as being like a successful investor or
25 something along those lines.

1 A. A satisfied investor, that's correct.

2 Q. So that's what you indicated to Mr. Moody, that you were a
3 satisfied investor?

4 A. Through his questions and through my statements about
5 Mr. Sherwood, yes.

6 Q. Okay. Now, do you recall being asked that same question
7 or that same line of questions during your grand jury
8 testimony?

9 A. Yes, I believe I did.

10 Q. Okay. And if you go to page -- beginning on page 18.
11 Line 18 of page 18. Mr. Mekaru asked you a question: "Did you
12 ever speak with Alan Moody?"

13 Do you see that? Tell me when you're there, please.

14 A. Okay. Yes.

15 Q. And then you said, "Yes I did," right?

16 A. Um --

17 Q. Line 18 it begins with on page 18.

18 A. Okay.

19 Q. And the question is: "Did you ever speak with
20 Alan Moody?"

21 And your answer is: "Yes I did." Correct?

22 A. Yes.

23 Q. And then he says, "Okay. Why did you speak with
24 Alan Moody?" And you say, "Answer: Alan Moody called me in
25 just September of 2000 asking me about Bryce Sherwood."

1 Do you see that?

2 A. Yes.

3 Q. And then Mr. Mekaru goes on, "Okay. What did you tell
4 him?" And you go on, "I told him that I thought that
5 Bryce Sherwood was a capable individual."

6 Do you see that?

7 A. Yes.

8 Q. And then he says, "All right. Now, did you tell Mr. Moody
9 that you were another investor or that you were another
10 individual who was introducing clients to him?"

11 And you say, "I did not specifically cover that. I
12 had --" and then there's a break -- "the conversation was more
13 in reference to Mr. Sherwood."

14 Do you see that?

15 A. Yes.

16 Q. And then Mr. Mekaru says, "What do you mean?"

17 And you say, "Answer: Basically asking for a reference,
18 character, name. Not character, a reference or Mr. Sherwood."
19 Maybe it means "of Mr. Sherwood," I don't know.

20 And then he says, "Okay. So how were you in a position to
21 be a reference for Mr. Sherwood?"

22 Your answer: "He asked me that, just basically what I
23 thought of Mr. Sherwood, and if he was capable, and I thought
24 he was."

25 So the "he" in this, that's Mr. Moody asking you, correct?

1 A. Yes.

2 Q. And you went on to say that -- you told him that you
3 thought Mr. Sherwood was capable, correct? I thought -- you
4 say, "I thought he was."

5 A. Okay. What line was that on?

6 Q. 12 of page 19.

7 A. I follow you.

8 Q. Okay. And then the next question is: "Had you done any
9 business with Mr. Sherwood at that point?"

10 Do you see that?

11 A. Yes.

12 Q. And then your answer: "Not that I recollect."

13 Do you see that?

14 A. Yes.

15 Q. So in reality the -- that's consistent with your testimony
16 today, right? You had not done any business with Sherwood,
17 correct?

18 A. Yes, that's correct.

19 Q. And even though you were suggesting to Moody that you had,
20 that was not -- you were lying to Moody?

21 A. Yes.

22 Q. Okay. 16. "So your recommendation of Mr. Sherwood wasn't
23 based on your own personal experience of having some financial
24 success with his investments?" And then your answer: "Not
25 that I can remember."

1 Do you see that?

2 A. Yes.

3 Q. "Question: And that also would be true for Mr. Heshelman,
4 right? You don't have any personal investment with
5 Mr. Heshelman that has been successful?"

6 "Answer: That's correct."

7 Right?

8 A. Yes.

9 Q. And then, "Question: Well, did you give Mr. Moody any
10 assurances about the safety of his investment or the
11 likelihood -- or likelihood that he would be getting his money
12 back or that his investment would" and then it tapers off.

13 Do you see that?

14 A. Yes.

15 Q. So now page 20, line 2. "Answer: I don't recall that
16 being part of the conversation."

17 Do you see that?

18 A. Just give me a second to review it.

19 Q. Okay.

20 A. I see it.

21 Q. Okay. So now your answer to Mr. Mekaru in front of the
22 grand jury under oath was you don't recall that being part of
23 the conversation, correct?

24 A. Yes.

25 Q. And then the next question --

1 A. Again, this is --

2 Q. I'm not asking for an explanation.

3 MR. MEKARU: Your Honor, he's not allowing him to
4 answer the question.

5 THE COURT: Let him answer the question, would you,
6 please, Mr. Tracy?

7 MR. TRACY: Sure.

8 THE WITNESS: Okay. At this time this was questions
9 that were off the cuff that I did not have time to really
10 recall, and this was a good five years in between asking about
11 a conversation. And I answered to the best of my ability. And
12 I'm trying to amplify my answer today. I've had considerable
13 time to think about that, and I've tried to cooperate with the
14 Court and tried to answer to the best of my ability, and at
15 that time I didn't really have any previous time to even think
16 about it. So it's a question right off the top of your head,
17 and I did not have time to really reflect on that. I'm trying
18 to amplify my answer today.

19 Q. (BY MR. TRACY) Okay. We'll go back into the transcript
20 for a minute now that you've opened up new ground for me.

21 So I take it when you received -- you received a
22 grand jury subpoena to testify before the grand jury, correct?

23 A. Yes.

24 Q. And that was before you testified in January of 2006,
25 right?

1 A. Yes.

2 Q. And I presume -- did you have an attorney that you
3 retained at that point in time?

4 A. No, I did not. I did not have a chance to talk to anyone.

5 Q. I presume that when you received the grand jury subpoena
6 that you took that very seriously?

7 A. Yes.

8 Q. And you understood the oath that you were taking to
9 testify to the best of your ability and to tell the truth
10 before the grand jury, it's the same oath that you've taken
11 today?

12 A. Yes.

13 Q. And when you say that you -- it was five or six years
14 after the conversation with Moody, that's going back to a
15 period of time in 2006, correct?

16 A. Yes.

17 Q. And now we're another three years past that date, so it's
18 been more like eight or nine years since you've had the
19 conversation with Mr. Moody, correct?

20 A. Yes.

21 Q. So let's go back into the transcript. So your last
22 response, page 20, line 2, "I don't recall that being part of
23 the conversation."

24 Correct?

25 A. Yes.

1 Q. And Mr. Mekaru goes on and says, "Don't recall or it
2 didn't happen?"

3 Do you see that?

4 A. Yes.

5 Q. And your answer: "I don't recall."

6 "Question: So it's possible there was a conversation
7 along those lines?"

8 "Answer: I don't think so."

9 So he didn't just ask you one question about it. He
10 probed you further to test your memory, correct?

11 A. Yes.

12 Q. Okay. Next question: "Well, if somebody is calling as a
13 reference and asking about, you know, Hey, do I invest with
14 this person, and it sounds like it's a million dollars or more,
15 would it be," and then it trails off.

16 Your answer: "I don't think at that point in time it was
17 really formulated as to what he was going to invest."

18 Do you mean "he" there meaning Mr. Moody?

19 A. Yes.

20 Q. Okay. "Question: But no questions about the success of
21 Mr. Sherwood's success as an investment advisor?"

22 Your answer: "No, it was more in terms of a personal
23 reference. If I knew him and knew his character."

24 That was your answer, correct?

25 A. Yes.

1 Q. "Question: So if Mr. Moody said that he was told that you
2 were a multi-million-dollar investor, that wouldn't be true?"

3 Do you see that question?

4 A. Yes.

5 Q. And then your answer: "Say that question again, please."

6 "Question: If Mr. Moody said that you told him" -- that
7 "you" being Mickelson there, right?

8 A. Yes.

9 Q. And told "him" being Moody, right?

10 A. Yes.

11 Q. ". . . you told him that you were a multimillion-dollar
12 investor, that wouldn't be accurate?"

13 And then you answered sort of with a question. You say,
14 "If I was a multimillion-dollar investor?"

15 Right?

16 A. Yes.

17 Q. "Question: That you told him you were a
18 multimillion-dollar investor."

19 "Answer: I don't recall that at all."

20 Correct?

21 A. Yes.

22 Q. And then question: "Don't recall or it didn't happen?"

23 Your answer: "I don't believe I ever would have said
24 that."

25 Now, we've been going on for two or three pages of this,

1 correct?

2 A. Yes.

3 Q. "Question: Well, that's something pretty significant from
4 Dan, right?"

5 Your answer: "Yes, exactly. I don't believe I would have
6 said that. Now, maybe Mr. Moody's recollection of the
7 conversation was different, but I don't specifically recall
8 anything like that."

9 "Question: Well, that's pretty significant. That gets
10 down to something to something pretty simple. Either you have
11 millions or you don't."

12 Your answer: "Well, I did not have millions."

13 I assume that was accurate. Correct?

14 A. Yes.

15 Q. And "Question: And what did you tell Mr. Moody?"

16 "Answer: I don't recollect that I told him that I was a
17 multi-million-dollar investor."

18 "Question: Did you tell him at all about getting monies
19 regularly from your investment and earning the percentage of
20 what was guaranteed, 8 to 10 percent of the money?"

21 "Answer: No, I do not."

22 So that was your testimony back in January of 2006,
23 correct?

24 A. Yes.

25 Q. Thank you.

1 Now, this money that you received, 900,000, million,
2 whatever it turned out to be, did you report any of that to the
3 IRS as income?

4 A. No, I did not.

5 Q. And to this day you still have not?

6 A. That's correct.

7 Q. Now, I take it from '99 to 2008 when -- late 2008 at this
8 point in time that Mr. Heshelman was arrested, you weren't with
9 him every day during that time period, correct?

10 A. Yes.

11 Q. You talked to him on occasion, though, right?

12 A. Yes.

13 Q. You knew he was living or at least traveling for
14 significant periods of time to places like, say, New York City,
15 for example?

16 A. Yes. He was living in New York City for -- at that time
17 period of which you are speaking of, I believe.

18 Q. Okay. So some period of time he also lived down in
19 Florida, didn't he?

20 A. Yes.

21 Q. And were you close to one another in Florida, or how far
22 were you apart?

23 A. We were basically in the same area.

24 Q. Okay. But you knew that he had left Florida for periods
25 of time to be up in New York City?

1 A. Yes, more times than he was in Florida.

2 Q. Okay. Was he also over in London for periods of time?

3 A. Yes.

4 Q. And eventually did he actually really move and move over
5 to Zurich, Switzerland?

6 A. Yes.

7 Q. And were you aware that he had a business or a business
8 address there that he was operating out of?

9 A. Yes.

10 Q. And I take it you were able to still stay in contact with
11 him?

12 A. Yes, there were periods of time when -- long periods of
13 time when I was not in contact with him and other periods of
14 time when I was in contact with him frequently.

15 Q. Okay. And were some of the periods of time you weren't in
16 contact with him because of things you were busy with?

17 A. Yes.

18 Q. And some of the periods of time you weren't in contact
19 with him was because of things he was doing and he was out of
20 contact with you?

21 A. Yes.

22 Q. Kind of some of both?

23 A. Yes.

24 Q. But ultimately when you needed to get in touch with him
25 when he was over in Zurich or wherever, you were always able to

1 do it over -- after some period of time?

2 A. Correct.

3 Q. All right. Now, some of the investments that were made by
4 Investors First -- and we can look at these in more detail off
5 of spreadsheets again -- were you aware of an investment that
6 was made with Puffin Investments?

7 A. Only very, very minor. I had some discussions with
8 Mr. Heshelman.

9 Q. Okay. Were you aware one of the gentlemen involved with
10 Puffin Investments was a guy by the name of Alan Shepherd?

11 MR. MEKARU: I'm going to object, Your Honor. The
12 witness has indicated his knowledge of this was solely based on
13 what he learned from the defendant, which would be hearsay.

14 THE COURT: Sustained.

15 Q. (BY MR. TRACY) Okay. Did you have any other knowledge
16 pertaining to the Puffin Investments other than what you've
17 heard from Mr. Heshelman?

18 A. I heard the name Alan Shepherd mentioned by Mr. Sherwood.

19 Q. So also through Mr. Sherwood?

20 A. Yes. But there was -- that's very minor from what I
21 heard.

22 Q. Okay. And were you aware of the amount of money that was
23 invested by Investors First with Puffin Investment?

24 A. I believe it was \$1 million.

25 MR. MEKARU: Again, Your Honor, to the extent that

1 this information came from somebody else, even if it's
2 Mr. Sherwood, it's still hearsay.

3 *THE COURT:* It sounds like it's double hearsay to me.

4 *Q. (BY MR. TRACY)* Did you see any of the investment records
5 or bank records showing the transaction being made with
6 Puffin Investments?

7 *A.* No, I did not.

8 *Q.* How about any investments with Kennedy Funding? Did you
9 have any involvement with any of that?

10 *A.* No.

11 *Q.* How about investments with anything called Environmental
12 Training Institute, did you have any involvement?

13 *A.* No.

14 *Q.* Now, Exhibit 23 -- and I don't think we're going to go
15 through it in much more detail -- that's your Plea Agreement in
16 this case, correct?

17 *A.* Yes.

18 *Q.* And you looked at that during the course of your direct
19 examination, right?

20 *A.* Yes.

21 *Q.* And just, again, to hit on a couple points, there is a
22 cooperation part of that paragraph?

23 *A.* Yes, there is.

24 *Q.* Paragraph 7 or whatever it is. And I take it that what
25 you're hoping happens is that -- what you have in that

1 agreement is essentially a five-year cap or maximum on what
2 your sentence can be?

3 A. Yes.

4 Q. But through your testimony here today and other
5 cooperation, you're looking to try to get below that amount of
6 time served, correct?

7 A. Yes.

8 Q. And as part of that you want your testimony to benefit
9 what the government is doing in this case?

10 A. It's to my interest, yes.

11 Q. Okay. Now, on your direct we had some discussion about
12 Chinese bonds or something like that, right?

13 A. Yes.

14 Q. Okay. And this involved at least one gentleman that I
15 heard his name, Ellis Smith?

16 A. Yes.

17 Q. And then there was another guy by the name of Sam
18 something?

19 A. Sam Kram.

20 Q. Sam and then Kram?

21 A. Yes.

22 Q. How does he spell his last name?

23 A. K-R-A-M.

24 Q. That's his real name?

25 A. Yes.

1 Q. Okay.

2 A. As far as --

3 Q. He doesn't go by Samuel or something?

4 A. Well, perhaps his legal name is Samuel. I don't know.

5 Q. Okay. Anyhow. It's -- it's got a rhythmic tone to it.

6 You made introductions in 1998 to Mr. Heshelman of these
7 two gentlemen; is that correct?

8 A. No.

9 Q. No?

10 A. Are you talking about Sam Kram and Ellis Smith?

11 Q. Yes.

12 A. No, Sam Kram introduced me to Ellis Smith; Ellis Smith
13 introduced me to Michael Heshelman.

14 Q. You didn't make the introduction?

15 A. No.

16 Q. Okay. But that's how you first got to meet Mr. Heshelman?

17 A. Correct.

18 Q. Now, what is -- is Mr. Smith still alive?

19 A. Yes, as far as I know.

20 Q. What's he doing today?

21 A. I'm not sure.

22 Q. Where was he from?

23 A. He was from Wisconsin.

24 Q. Okay. And Mr. Kram, is he still alive?

25 A. As far as I know.

1 Q. And where was he from?

2 A. Florida.

3 Q. Do you know what he's doing today?

4 A. No, I do not.

5 Q. How old a gentleman would these guys be?

6 A. Um, Mr. Kram is probably close to 80 years old.

7 Q. And how about Mr. Smith?

8 A. I would expect that Mr. Smith would be somewhere in his
9 fifties. Maybe older.

10 Q. Okay. All right. Now, I believe you talked about these
11 Chinese bonds in your opinion being essentially fraudulent; is
12 that correct?

13 A. Yes. They are historical documents that are sold, but the
14 way in which they are used creates a -- creates a fraud.

15 Q. Okay. But do you know anything about what Ellis Smith's
16 business was back in 1998?

17 A. I knew there was some associations with bonds.

18 Q. Okay. Do you know whether there were parts of his
19 business that were completely legitimate?

20 A. I would imagine that that is a very distinct possibility.

21 Q. Okay. So you're not an expert on what day-to-day
22 activities Mr. Smith was doing?

23 A. No.

24 Q. And I take it that's the same thing regarding Mr. Kram?

25 A. Correct.

1 Q. Okay. But you call these historical documents, correct?

2 A. Yes.

3 Q. Do they trace back to the time before China became a
4 Communist nation?

5 A. Yes.

6 Q. So back to the time of Kai-shek before Mao Tse Tung?

7 A. They were 1913 issue. I'm not sure of the political
8 associations of China at that time.

9 Q. Okay. But you recall Mao Tse Tung came into power in the
10 forties?

11 A. Yes.

12 Q. So these predate Mao Tse Tung?

13 A. Yes.

14 Q. And as historical documents, I take it they probably have
15 some value?

16 A. Minor amounts, yes.

17 Q. Well, minor amounts to you. I mean, you --

18 A. I understand. I can qualify -- I can certainly qualify
19 that.

20 Q. A million and a half dollars is quite a bit of money that
21 flowed to you. Minor amounts to other people may mean
22 something different. Tens of thousands of dollars worth of
23 value? Hundreds of thousands of dollars?

24 A. The Chinese bonds in reference to this I paid \$200 a bond
25 for.

1 Q. Two hundred dollars a bond?

2 A. Yes.

3 Q. But you paid at or over \$700,000 in total for these bonds?

4 A. Yes.

5 Q. Now, where did that money come from?

6 A. It came from other people's money. Investors.

7 Q. Okay. OPM, right, other people's money?

8 A. Yes.

9 Q. But this is way -- this is before you ever were involved
10 with Mr. Heshelman?

11 A. Yes.

12 Q. So it had nothing to do with the Investors First
13 investments?

14 A. That's correct.

15 Q. So you got other people's money to invest?

16 A. Yes.

17 Q. And part of the things that you decided to invest in were
18 these Chinese bonds?

19 A. Yes.

20 Q. I presume you were hoping to make money on them?

21 A. Yes.

22 Q. And I lost the train of thought a little bit in your
23 direct. Do you now have possession of most of the bonds or all
24 of the bonds?

25 A. No, I do not.

1 Q. Who does?

2 A. They are gone.

3 Q. And how so? Did you sell them? What did you do with
4 them?

5 A. Some were lost. Some were given to some people to try and
6 do things with. Others were just sold. Others were just --
7 basically people had taken them and not paid me.

8 Q. Okay. And I also take it you're not holding yourself out
9 as an authority on Chinese bonds, correct?

10 A. No, I'm not.

11 Q. All right. Are you aware of any court cases or ongoing
12 matters within the United States or China about determining the
13 value of those bonds?

14 A. There could be, but I have no direct knowledge of court
15 cases or seen court cases or anything of that nature.

16 Q. So you don't have any knowledge one way or the other on
17 that?

18 A. That's correct.

19 Q. Did you ever actually see the bonds?

20 A. Yes.

21 Q. Were they pretty interesting to look at?

22 A. Yes.

23 Q. Okay. Now, we also on your direct had a chance to hear
24 about some other things that you and Mr. Sherwood were up to,
25 right?

1 A. Yes.

2 Q. And these things, like for example, this stuff in 2008
3 involving currency trading, that had nothing to do with
4 Mr. Heshelman, right?

5 A. That's correct.

6 Q. And we heard some monies went to Mr. O'Brien -- came from
7 Mr. O'Brien and et cetera, right?

8 A. Yes.

9 Q. Now, I take it from your testimony what you were
10 attempting to do with those currency trades, that was
11 completely legitimate, right?

12 A. Yes.

13 Q. Those are legal transactions to deal with?

14 A. From my understanding, if you are trading a few accounts
15 at a time, it's legal, and it becomes restricted and needing a
16 license after a certain number of accounts.

17 Q. So you can trade at higher amounts, but you have to go
18 through certain certification or licensing?

19 A. Yes, you can have more clients, but you have to be able to
20 have a license at that point.

21 Q. And is that through the SEC, if you know?

22 A. Yes, it's a -- they are audited. It's monitored. They
23 have currency trading houses that house the money, and they
24 have a fiduciary responsibility to the customers, much like a
25 bank has a fiduciary responsibility to its clients.

1 Q. Okay. And I take it you didn't have that kind of
2 licensing?

3 A. No, I did not.

4 Q. And as far as you're aware Mr. Sherwood didn't either?

5 A. That's correct.

6 Q. But you were aware at some point in time he was registered
7 and licensed with the SEC, Mr. Sherwood that is?

8 A. Yes.

9 Q. But at the point in time in 2008 when you were dealing
10 with this, he had none of that licensing and registration?

11 A. Not that I'm aware of.

12 Q. Now, it sounded like on direct that the people that you
13 brought to this currency trading you explained the risks to
14 them relating to the investment.

15 A. Yes, on the second part of it I explained it more
16 thoroughly.

17 Q. Yeah, the second part being in the 2008 period?

18 A. Correct. Correct.

19 Q. You took more of an active role, correct?

20 A. Yes. I made sure that they would not lose all their
21 money.

22 Q. Okay. And it sounded like with respect to some of them
23 you actually took enough of a role that you even advised them
24 when they may want to get out of an investment?

25 A. Yes, that's correct.

1 Q. All right. Now, from that discussion I take it that you
2 understood at least to some degree something about the currency
3 trading?

4 A. Yes.

5 Q. And you were somewhat, maybe not day-to-day but close to
6 day-to-day involved with that process?

7 A. I understood the workings of it, and I worked with the
8 clients to be able to make sure that their money was protected.

9 Q. Okay. I want to compare that to what Investors First and
10 Mr. Heshelman were trying to put in place.

11 Those types of trading platforms on the international
12 banking level you did not have any familiarity with, correct?

13 A. Yes, I -- to this, that's correct.

14 Q. Okay. And again, you never participated with
15 Mr. Heshelman with any meetings that took place with bankers or
16 financial people over in Zurich, correct?

17 A. No, I did not.

18 Q. Nor did you participate with him in any such meetings that
19 happened in London?

20 A. No, I did not.

21 Q. Nor with any meetings that happened in New York City?

22 A. That's correct.

23 Q. Now, you may have somebody particular in mind, but during
24 your direct I also got the sense that sometime maybe in the
25 '07/'08 period, in other words, just within the last year or

1 two, you also made other introductions to Mr. Heshelman of
2 people over in Europe, correct?

3 A. That's correct.

4 Q. And part of the reason why you continue to make those
5 introductions is that you were still hopeful that the type of
6 trading platform that he was trying to get into place could
7 happen to show a return on the people's investment, correct?

8 A. I thought there was an outside chance that there might be
9 something that could be done that was legal, but I did not see
10 any of the direct information.

11 One of the other reasons why I did that is so that I could
12 see if Mr. Heshelman did have monies, if he was capable of
13 perhaps assisting in this situation to try and return some of
14 the monies to the investors on this particular court
15 proceedings today.

16 Q. Okay. So you knew that there were still literally
17 hundreds of thousands of dollars out there to be paid back on
18 people's investments, correct?

19 A. Yes, there was more than that I believe, obviously.

20 Q. Okay. And you were making introductions to people in
21 Europe for Mr. Heshelman for two purposes, then, as I
22 understand it. One was so you could kind of keep tabs on them
23 and see whether or not he had potential monies that might help
24 pay back some of the people that invested; is that right?

25 A. Yes.

1 Q. And the second was that you were holding out some outside
2 chance, remote possibility that something may come into place
3 in terms of a trading platform?

4 A. Not a trading platform but some sort of legal means in
5 which to be able to assist in here. I think a trading platform
6 is maybe overstating it.

7 Q. Some type of investment, whether it's --

8 A. Yes.

9 Q. -- bonds or whatever the case may be?

10 A. Yes.

11 Q. That would return an investment and hopefully pay the
12 people back?

13 A. Yes.

14 Q. And you were doing that as late as last year?

15 A. Yes.

16 MR. TRACY: Okay. Thank you very much.

17 Nothing further, Your Honor.

18 THE COURT: Thank you, Mr. Tracy.

19 Any redirect, Mr. Mekaru?

20 MR. MEKARU: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. MEKARU:

23 Q. Okay. Mr. Mickelson, you were asked some questions here,
24 I guess, about the difference between your recollection of how
25 much money you received from Mr. Oliver and the spreadsheets --

1 A. Yes.

2 Q. -- right? Now, as much as you may have seen the
3 spreadsheets that were prepared by the government before today,
4 before your testimony -- excuse me -- before your preparation
5 for your testimony, maybe even all the way back to 2006, did
6 you participate at all in preparing those documents and
7 identifying what monies were actually associated with the
8 particular transaction?

9 A. No.

10 Q. So it was really the government who went through and
11 decided what to include in there without your participation?

12 A. Yes.

13 Q. And as far as you're concerned, in your recollection how
14 much money did you get from Mr. Oliver's transaction?

15 A. I believe it was around -- I know it was \$10,000 on the
16 first \$360,000, and I believe it was an additional 40,000.

17 Q. And those other monies, it's possible those might be
18 associated with Mr. Oliver, but it's also possible it may be
19 associated with some other, some other investment?

20 A. Yes, that's correct. From the overlapping dates that I
21 see, there were other new investors that had come forward
22 during those dates.

23 Q. Now, you were asked lots of questions about your
24 grand jury testimony. You remember that, right?

25 A. Yes.

1 Q. You were issued a subpoena to come in and testify back on
2 January 26th, 2006.

3 Now, you said that you were not represented, right?

4 A. That's correct, I had not talked to anyone.

5 Q. You were called in to provide some information to the
6 grand jury who was at that point still investigating this
7 matter, right?

8 A. That's correct.

9 Q. So you said you weren't represented. So the
10 plea agreement that you had and that cooperation agreement that
11 you had with the government, did that apply to your testimony
12 before the grand jury?

13 A. No. In 2006 I was not represented with counsel.

14 Q. So you weren't obliged in 2006 to cooperate with the
15 government, were you?

16 A. That's correct.

17 Q. Now, you did take an oath to testify truthfully, though,
18 right?

19 A. Yes.

20 Q. And as you indicated -- as we indicated earlier in your
21 direct testimony, though, you've already -- you've already
22 indicated that when you were first asked about this whole
23 activity that you were less than fully candid, right?

24 A. Yes.

25 Q. So you didn't provide the information when you were first

1 asked about -- you didn't provide the government with a full
2 picture of everything that was going on the first time you were
3 asked?

4 A. Correct.

5 Q. Maybe not even the second or third time. But eventually,
6 as far as you're concerned, have you given the jury the full
7 picture of your activities?

8 A. Yes.

9 Q. So there may be some instances where you were asked
10 questions back in 2006 where you were less than fully candid?

11 A. Yes.

12 Q. And maybe even --

13 A. With the Moody thing, that conversation caught me a little
14 offguard because I couldn't remember at that time. That's --
15 after giving it some thought, it was easier to remember what
16 actually had occurred.

17 Q. Well, do you find that that's true for you, that if you
18 spend some time thinking about something, you're able to recall
19 it better?

20 A. Yes, after five years someone comes up to you and says,
21 you know, What was the address of Mr. Jones five years ago?
22 It's hard to recall it immediately. If you have a chance to
23 think about it, then many times it's clearer in your mind.

24 Q. Okay. Well, I think counsel has a point, though. I mean,
25 that was five years after a conversation. We're now at nine,

1 10 years after the conversation.

2 A. Well, there's another factor there that you're not
3 considering, and that after given that question I was able to
4 be able to think about it at that time.

5 Q. So let me see if I'm clear now. Even though more time has
6 passed, is your recollection of that conversation clearer now
7 or was it clearer back then?

8 A. Clearer now.

9 Q. All right. Now, you were asked some questions about where
10 Mr. Heshelman was back in this period of '99 through 2008.

11 You said he was in Florida, New York, sometimes in London,
12 Zurich. But you were still able to contact him, right?

13 A. Yes.

14 Q. But you were able to contact him by phone --

15 A. Yes.

16 Q. -- right? And these phones, were these landline phones or
17 cellular phones?

18 A. In almost all instances they were cellular phones on the
19 part of Mr. Heshelman.

20 Q. And that's what I was actually referring to. Thank you
21 for clarifying. So we're talking about what sort of phone is
22 Mr. Heshelman on. So really he could be anywhere?

23 A. I would assume that he was in Switzerland since I was
24 calling Switzerland. I don't know all of the -- how far those
25 particular phones pick up, but I guess there's world chips, I

1 guess there's different -- I assume that he was in Switzerland.

2 Q. But in terms of exact location of where he is in
3 Switzerland even?

4 A. No. No.

5 Q. All right. Counsel was asking you some questions about
6 you don't know what Mr. Heshelman was doing in Switzerland, you
7 don't know if maybe he was actually doing some real deals or
8 not.

9 All right. Sure. Okay. Maybe we don't know what
10 Mr. Heshelman is doing on a day-to-day basis in Switzerland or
11 London or New York, but let's focus again on what you do know.

12 The investment proposal that you had with Mr. Heshelman to
13 go to these investors, to go to Mr. Edwards, Mr. Oliver,
14 Mr. Clyde, Mr. Ramsey, Mr. Williams, and Mr. Moody, was there
15 anything at all legitimate about this investment plan that was
16 being proposed by Mr. Heshelman and that you were conveying to
17 these other people?

18 A. I don't believe so. I had conversations with
19 Mr. Heshelman that there were no proof -- that I had no proof,
20 nor did he have any proof, that at that time that these trading
21 programs actually existed, yet I was going out --

22 Q. Personally they may not have even existed, but --

23 A. But I went out and -- I went out and I found investors.

24 Q. Okay. Let's assume even if these did exist, based on your
25 knowledge of what was going on, was there any sort of trading

1 activity that was even going on?

2 A. No, not to my knowledge.

3 Q. What was happening with the money?

4 A. The money was coming into Ken Warner's account and it was
5 going out. Obviously I -- there was money that was sort of
6 directed by Mr. Heshelman. I think the spreadsheets are more
7 accurate than what I could explain. But there was money coming
8 in and money going out very quickly.

9 Q. And all the decisions about where that money went, that
10 was Mr. Heshelman's?

11 A. Yes.

12 MR. MEKARU: Thank you.

13 THE COURT: Anything further, Mr. Tracy?

14 MR. TRACY: Are you all set?

15 MR. MEKARU: Yes.

16 MR. TRACY: Just a couple, Your Honor. Thank you.

17 RECROSS-EXAMINATION

18 BY MR. TRACY:

19 Q. So, Mr. Mickelson, I just need to re-cover a little ground
20 here.

21 This giving some thought to Moody, the Moody
22 conversation --

23 A. Yes.

24 Q. -- I take it that the government has encouraged you to
25 give some thought to your involvement, correct?

1 A. This thought process --

2 Q. Just -- that's really a yes or no.

3 THE COURT: No, it isn't really, Mr. Tracy. I mean,
4 give the man an opportunity to respond to the question fairly,
5 please.

6 MR. TRACY: Okay.

7 THE WITNESS: Okay. After going to a grand jury and
8 being asked that question, I obviously started to probe my --
9 after I came back, I started to think about that. And I've
10 tried to amplify my answer to date to the best of my ability
11 and to clarify that.

12 So I had more time to think about it, and I clarified
13 my answer to date to the best of my ability.

14 Q. (BY MR. TRACY) So since that period of time you've had a
15 chance to meet with Agent Wetherbee?

16 A. Yes.

17 Q. On several occasions?

18 A. Yes. This was much later, though. This was much later
19 after the thought process.

20 Q. That's fine. You keep adding things. I'm just asking you
21 very simple questions. Okay?

22 A. Sure.

23 Q. And you've also had a chance to meet with Dan Mekaru?

24 A. Yes.

25 Q. And you've also had a chance to talk with them about

1 Mr. Moody's understanding of his version of the conversation
2 that you had, correct? In fact, Dan Mekaru asked you about
3 that component of it during the grand jury. That's what we
4 just went through.

5 A. Yes. We did not spend a whole lot of time talking about
6 Mr. Moody, that conversation only. As far as him probing me or
7 anything like that, I don't -- that did not really occur.

8 Q. But they did tell you that Mr. Moody's recollection on his
9 side of the conversation was that you portrayed yourself as an
10 investor, correct?

11 A. Yes. Yes.

12 Q. Now, this landline versus cell phone stuff, we've had that
13 with a few witnesses. I take it over the course of your life
14 you've had people tell you the truth while they are talking on
15 a cell phone with you?

16 A. Yes.

17 Q. I take it over the course of your life you've had people
18 lie to you on the course of a cell phone?

19 MR. MEKARU: Your Honor, I'm going to object.

20 THE COURT: Mr. Tracy, there's an objection, please.

21 MR. TRACY: Okay.

22 MR. MEKARU: Again what we're talking about here is
23 what he's being told. What this witness is being told about
24 where the defendant is is all going to be hearsay. It's
25 permissible for me to probe that with this witness about what

1 he's being told about where the defendant is, but it's not
2 permissible for the defense.

3 MR. TRACY: That's not my question at all. I'm
4 asking him whether he's had conversations on cell phones where
5 people --

6 THE COURT: Mr. Tracy, let's just move on.

7 MR. TRACY: I didn't bring it up.

8 THE COURT: That's self-evident, okay?

9 MR. TRACY: So it's self-evident that people can talk
10 on landlines and cell phones --

11 THE COURT: I mean, obviously.

12 MR. TRACY: Okay. It wasn't my line of inquiry.

13 Q. (BY MR. TRACY) Now, back to the prior lies or failures to
14 tell the complete truth that apparently occurred from what I
15 heard on your direct and redirect. You're saying that you
16 failed to tell the complete story to the government for at
17 least the period of time that you were before the grand jury,
18 correct?

19 A. Again, it was a question that I had no time to think about
20 or prepare. It's just like someone asking you who your grade
21 school teacher was in third grade.

22 Q. I'll tell you.

23 A. Okay.

24 Q. Mrs. Owens.

25 A. You have a wonderful memory. I wish my memory was as good

1 as -- that I could recall facts as instantaneously as that.

2 Perhaps when you get my age they won't appear so
3 instantaneously.

4 Q. Okay. But today is the magic day, today is the truth day,
5 today is the day you've got it all in your head. Is that my
6 understanding?

7 A. I've gotten a chance to reflect much more on that question
8 back in 2006, and I was able to formulate my thoughts about
9 that at that period of time and since that time, and I am
10 amplifying my answer to the best of my ability today.

11 Q. Thank you for your amplifications today, sir. Thank you.

12 A. You're welcome.

13 THE COURT: Are we done with Mr. Mickelson?

14 MR. TRACY: I'm all done. Thank you.

15 MR. MEKARU: Yes, Your Honor, thank you.

16 THE COURT: Thank you, Mr. Mickelson. You may step
17 down.

18 THE WITNESS: Thank you.

19 THE COURT: Mr. Mekar.

20 MR. MEKARU: Your Honor, I wanted to read a
21 stipulation into the record.

22 The parties have -- this is a new stipulation.
23 Stipulation number 8. Let me tender this to your clerk.
24 Your Honor, it just occurred to me I wanted to clarify a point.
25 The parties stipulate and agree that wire transfers are wire

1 communications. The jury may find this fact as proven at
2 trial.

3 *THE COURT:* Thank you, Mr. Mekar.

4 *MR. MEKARU:* And with that, Your Honor, the
5 government will close its case-in-chief.

6 *THE COURT:* Well, this is probably a good time to
7 take a break, Ladies and Gentlemen. We've been at it for about
8 an hour this afternoon. The government has now closed its
9 case-in-chief which will require us to -- will require me to
10 have some inquiry with counsel, so we'll take a break here of
11 about 15 minutes or so, and then we'll hopefully know where we
12 are going forward.

13 *(Jury exited the courtroom at 2:34 p.m.)*

14 *THE COURT:* Have a seat, please.

15 *MR. TRACY:* Thank you.

16 *THE COURT:* Where are we now, Mr. Tracy? The ball
17 seems to be in your court at this point.

18 *MR. TRACY:* Well, for the record, at some point I
19 would like to just put a Rule 29 motion on the record at the
20 close of the government's case, so we can do that maybe during
21 this break if the Court would like to.

22 *THE COURT:* Well, what I would like to do is know
23 from you beyond that whether you're prepared to put on any
24 testimony this afternoon.

25 *MR. TRACY:* Yep, we can, Your Honor. My -- do you

1 want me to sit down?

2 *THE COURT:* It --

3 *MR. TRACY:* However? Mike Boyd is the sort of expert
4 or fact witness on some of the --

5 *THE COURT:* Opinion witness is how to say that.

6 *MR. TRACY:* Thank you. I believe his flight comes in
7 at quarter-to-eleven tomorrow, so he'll be here about 11:30.
8 So I was planning on putting him on after lunch. And then I
9 need to talk to Mr. Heshelman about whether or not he's going
10 to take the stand, and my preference would be to do that
11 tomorrow and not this afternoon.

12 And then the other witness that I was considering
13 calling because the government hasn't called them is maybe
14 calling Agent Wetherbee to the stand. So the only person I
15 would really like to move forward with, but I would like to
16 have a chance to talk to my client again for a few minutes, is
17 whether or not we put Agent Wetherbee on the stand this
18 afternoon.

19 *THE COURT:* Why don't we do that. Why don't you talk
20 with Mr. Heshelman, make that decision about his testimony and
21 Mr. Wetherbee's testimony before we hear your motion.

22 *MR. TRACY:* That's fine. And then we would -- can I
23 take five or 10 minutes to do that?

24 *THE COURT:* Yes, we'll give you a little -- a minute
25 to take that, and we'll come back and put your decision on the

1 record and hear your motion.

2 MR. TRACY: Okay. Thank you very much, Your Honor.

3 THE COURT: Thank you.

4 THE CLERK: Everyone rise. This Court is in recess.

5 (Recess taken at 2:36 p.m.)

6 (Back on the record at 3:00 p.m.)

7 THE COURT: Mr. Tracy, before we get into your
8 motion, I'm just trying to decide here whether to send the jury
9 home. It's going to take probably a half an hour to get
10 through your motion between the time you present and Mr. Mekaru
11 argues and so forth.

12 Are you prepared to put on any testimony this
13 afternoon or not?

14 MR. TRACY: I was going to put Agent Wetherbee on
15 this afternoon if the Court would like, or that can occur first
16 thing in the morning. It does not matter to me.

17 THE COURT: What do you anticipate in terms of timing
18 with regard to him?

19 MR. TRACY: My questions would probably be a
20 half-hour or less.

21 THE COURT: So we might be able to finish -- if we
22 finish with him today, I've got a matter starting at 8:30 in
23 the morning. No, 8:00 in the morning.

24 THE CLERK: 8:00.

25 THE COURT: I've got a matter starting at 8:00. We

1 can start here surely not later than 9:00.

2 Are you prepared to go ahead then tomorrow morning
3 with testimony or not?

4 *MR. TRACY:* Well, if we don't do Agent Wetherbee
5 today, then, yes, I'd be prepared with him, and then I'll
6 get -- I'm going to talk with Mr. Heshelman further about
7 whether he'll take the stand.

8 *THE COURT:* You haven't decided that yet?

9 *MR. TRACY:* No. I think that's probably going to
10 happen, but I want to talk to him a little bit more after we
11 break today. That's probably going to happen, Your Honor, but
12 we'll make the final decision later this evening. Mr. Boyd --

13 *THE COURT:* See, that's the juggle part, because if
14 Mr. Heshelman isn't going to testify, then we have nothing to
15 fill up the morning tomorrow if we finish with Mr. Wetherbee
16 today. And if that's the case, I'd just as soon send the jury
17 home.

18 *MR. TRACY:* I think that's probably the way to do it
19 right now if that's okay with Your Honor. That way we can
20 start kind of fresh in the morning, and I'll know for sure from
21 my conversations with my client about whether he's going to
22 take the stand, and we can start with Agent Wetherbee first
23 thing in the morning.

24 *THE COURT:* All right. Let's do that.

25 Susan, would you bring the jury in, and I'll send

1 them home.

2 *THE CLERK:* We may be missing two. When I told them
3 there was a legal issue, two of them said, "Can we go back
4 downstairs?"

5 *THE COURT:* Maybe one of the CSOs can go round them
6 up.

7 *MR. TRACY:* Do you want to hang around and still do
8 the 29 today on the record?

9 *THE COURT:* No, I -- yes.

10 *MR. TRACY:* After they are gone?

11 *THE COURT:* Yes. I want to send the jury home, and
12 then we'll hear your motion.

13 *MR. TRACY:* Okay. Do you want to talk a little
14 housekeeping before they come in, Your Honor?

15 *THE COURT:* Sure. What's up?

16 *MR. TRACY:* So I think one way or the other we would
17 be done -- I don't know if Dan will have rebuttal, obviously --
18 but we'll be done in the afternoon once Mr. Boyd takes the
19 stand. So is the Court thinking, depending on what the
20 rebuttal case is, that closing arguments would probably be
21 first thing Thursday?

22 *THE COURT:* That's what I'm thinking. My thought was
23 that we would have our instruction conference after -- tomorrow
24 afternoon and then start with -- the way I do it is to instruct
25 first and then arguments.

1 MR. TRACY: Oh, you'll do the instructions first?

2 THE COURT: Yes.

3 MR. TRACY: So they have that --

4 THE COURT: Yes, so they have a legal context for the
5 arguments they're going to hear. So that was kind of my
6 optimistic view, that the jury would get the case on Thursday
7 morning.

8 MR. TRACY: Okay. So probably you'd be through your
9 instructions, what, a half-hour, 45 minutes normally? Is that
10 about right?

11 THE COURT: Yeah, probably.

12 MR. TRACY: So if we started at eight-thirty or nine,
13 then we would follow with closing arguments?

14 THE COURT: Right. Right. How did we do?

15 COURT SECURITY OFFICER: They are on their way.

16 THE COURT: Okay. Thank you very much.

17 *(Jury entered the courtroom at 3:06 p.m.)*

18 THE COURT: Ladies and Gentlemen, after discussing
19 things with the lawyers, I've decided that this is a place to
20 break for the day. We do have a legal matter to take up that
21 will take some little time, and then we can start fresh
22 tomorrow morning with the defense putting in its case.

23 So we're going to break for now. I hope to be
24 able -- I can't think of any reason why we can't start by 8:45
25 tomorrow morning. I've got a matter that I have to hear at

1 8:00, and that shouldn't take more than a half an hour. So if
2 you could be back in the jury room at 8:30 tomorrow, ready to
3 go by 8:45, we'll get started first off with Mr. Tracy.

4 And again, no discussions, no research. You know,
5 sort of when you go away from the jury room, kind of forget
6 what went on. Just, you know, go about your daily business and
7 be fresh for tomorrow morning when we come back and start
8 hearing some more testimony. Okay? Thanks.

9 *(Jury exited the courtroom at 3:07 p.m.)*

10 *THE COURT:* Mr. Tracy, your motion.

11 *MR. TRACY:* Thank you, Your Honor.

12 Right here, is that fine, Your Honor, to do it?

13 *THE COURT:* Yes.

14 *MR. TRACY:* Okay. And hopefully I won't take quite
15 as long as you've given me. I won't rehash the closing
16 argument that we'll hear hopefully on Thursday.

17 *THE COURT:* You can turn that if you want, if you're
18 more comfortable.

19 *MR. TRACY:* This is fine, Your Honor, if it doesn't
20 bug you.

21 Pursuant to Federal Rule of Criminal Procedure
22 Rule 29(a), we're making a motion for a judgment of acquittal.
23 Obviously for purposes of that rule the government doesn't need
24 to meet its "beyond a reasonable doubt" standard. I think the
25 standard is set out in a couple different cases, but probably

1 both the Court and the government -- the government and the
2 Court are probably aware of, so I won't go into that part of
3 it.

4 Our focus is very simple, Your Honor. There's no
5 doubt that the government has shown the wire transfers and all
6 of the prerequisite elements of the charges they have made.
7 The focus is on the whole question of intent. And the basis
8 for our motion here, and then we're asking the Court to acquit,
9 essentially to find that no reasonable jury could come to the
10 conclusion that there was an intent to defraud. And that's the
11 element that we're focusing on.

12 Rather you'll hear testimony, including today from
13 Mr. Mickelson, even as of 2008 he introduced people to
14 Mr. Heshelman over in Europe. And I think his terms were there
15 was an outside chance, a remote possibility that things would
16 still come through in terms of the investments.

17 We heard the same thing last week from various
18 investors, most notably from Paul Ramsey. And I think that his
19 testimony was the most helpful for purposes of at least our
20 side of the case on that issue.

21 There's no doubt that monies were lost and
22 investments did not turn out in the manner in which they had
23 hoped. Some people did get their monies returned. There's no
24 doubt that if this were a civil case that, you know, burdens
25 would have been met in terms of promissory notes not being paid

1 on and the like. But this is a criminal case, and the
2 government must prove the intent to defraud, and based upon the
3 testimony we've heard, we respectfully submit to this Court
4 that that intent element has not been proven, and we're asking
5 for acquittal. Thank you, Your Honor.

6 *THE COURT:* Mr. Mekaru.

7 *MR. MEKARU:* Well, I guess I want to be clear here.
8 Is counsel moving for a Rule 29 acquittal for all 46 counts?

9 *MR. TRACY:* Yes, Your Honor.

10 *MR. MEKARU:* Okay. Well, then albeit short on his
11 part, that actually puts a lot on me to go through and
12 establish.

13 Look, Rule 29, as the Court is well aware, that the
14 Court has to consider the evidence in a light most favorable to
15 the government. Essentially whether there is wholly -- a
16 wholly lack -- there's a lack of evidence to support any of the
17 counts as charged, that no jury could find the defendant guilty
18 on any of the 46 counts.

19 So beginning with count number 1, conspiracy, whether
20 there was an agreement between two or more persons, whether the
21 defendant knowingly, voluntarily joined the conspiracy, and
22 whether one of the overt acts was committed by one of the
23 conspirators in furtherance of the conspiracy.

24 Well, two or more people, at the very least we have
25 Mr. Sherwood and Mr. Mickelson saying that they agreed that

1 they were going to be committing an investment fraud. They
2 have admitted to such.

3 Now, the architect of all of this was Mr. Heshelman.
4 So Mr. Heshelman would be that third conspirator. And we've
5 also had testimony about other individuals who participated and
6 joined in this conspiracy, even if they weren't indicted and
7 named as such.

8 The defendant knowingly joined and volunteered to
9 join this conspiracy. Well, again, the defendant was the
10 architect. There's no question here that there was evidence
11 that the defendant joined the conspiracy. You had
12 Mr. Mickelson testify that, yes, this was what the defendant
13 had come up with. This was his idea. All sorts of testimony
14 corroborating that testimony that the investors said that they
15 were told about the nature of this investment, it was
16 represented to them to be safe and secure, and rather than that
17 being the case, that -- obviously we won't get into the wire
18 fraud aspect -- but the money was spent.

19 Overt acts. Overt acts in the Indictment including
20 monies coming in from Mr. Oliver, Mr. Ramsey, Mr. Clyde,
21 Mr. Williams, Mr. Moody, and those monies not being kept safe
22 as represented, and there's more than ample evidence that the
23 money was not maintained safe and secure as represented.

24 So with respect to Count 1, I think we have more than
25 sufficient evidence to substantiate not only proof beyond a

1 reasonable doubt, but at the very least allowing Count 1 to go
2 to the jury.

3 Counts 2 through 27, wire fraud. What is the scheme
4 to defraud? Did the defendant devise a scheme to defraud?
5 This is the whole crux of this case, but this was an investment
6 fraud. That was the scheme. The scheme to defraud means some
7 sort of device or mechanism to lie to people to get their money
8 from them. That's essentially what this investment fraud was.
9 There's no doubt that there was a scheme to defraud. The
10 question was whether the defendant devised it.

11 Again, we have testimony that he was the one who came
12 up with the scheme. He was the one who perpetuated it. He was
13 the one who closed the deal with investors. Whether there was
14 a material misstatement, some sort of material fact that was
15 being conveyed to these investors. I can't think of anything
16 more material than the fact that their money would be safe and
17 their money wouldn't be invested. That, again, goes to the
18 heart of the matter.

19 Whether the defendant acted or whether there was some
20 sort of wire transfer in furtherance of this scheme, we've had
21 34 wires that have been listed as exhibits, and Exhibit 5A
22 through 5HH. The check being the last one. In addition to the
23 other wires that are scattered throughout the other exhibits
24 that have been entered into this case. So there's clearly
25 wiring activity. It is in furtherance of the scheme.

1 While that's not necessarily a -- it's not a
2 necessary element that it be the heart of the fraud, in this
3 case it is. The wiring of the money ultimately was the proof
4 of the intent to defraud.

5 Bear with me. I was going off the top of my head
6 here regarding the wire fraud elements. Oh, intent to defraud.
7 Again, those -- the defendant is suggesting there is no
8 evidence of the intent to defraud.

9 As the Court will instruct the jury, this intent,
10 this knowledge, this ability to peer into somebody else's brain
11 isn't possible, so we have to look to other evidence that would
12 give rise to support the belief that the defendant had the
13 intent to defraud.

14 Where do we find that? In the fact that he's telling
15 the people one set of statements. A set of lies about what's
16 going to happen to their money and then turning around and
17 spending it.

18 That in and of itself is a clear indication that the
19 defendant had no intention of actually investing the money as
20 represented, and second, he was just going to spend it. And
21 then he had to perpetuate this scheme by continuing to lie to
22 these people to lull them into believing that just around the
23 corner there's more money to be had.

24 The fact that these people believed that there was
25 some possibility that maybe they will be able to get their

1 money, maybe there's hope, is again just preying on their faith
2 and belief that it's possible. Because why would they want to
3 believe this?

4 Well, for the investors because they lost millions.
5 Mr. Ramsey lost two and a half million dollars. If there's no
6 chance for him to get this money back, he has to write that
7 off.

8 So we're talking about the investors' hope and
9 belief. That's distinct from the defendant's intent to
10 defraud. He is just playing on their desire that perhaps they
11 are going to be able to get their money back.

12 Likewise, with Mr. Mickelson, I'm sure there's some
13 hope that if the defendant wins the lottery and has all this
14 money and is able to give it back, maybe everything goes away.
15 Maybe this case will just vaporize and he'll be safe, he won't
16 have to face an Indictment, he won't be a convicted felon.
17 That is a statement of faith and hope on that witness's part.
18 It does not give evidence to this defendant's intent to
19 defraud.

20 The intent to defraud is all found in the defendant's
21 original statements and about the fact that this was going to
22 be the scheme, and they laid it all out on how they were going
23 to be able to take these people's money and use the attorney
24 account to misdirect them about where their money was going.

25 All right. Now, with respect to the individual

1 counts, Your Honor, we've laid them out. I do note, I don't
2 know how, but Counts 2 and 3, we'll point this out to the jury
3 again, that the wire transfer as charged is on March 7th, 2001.
4 All the evidence has come in it's clear that it's March 6th,
5 2001. That Mr. Moody -- excuse me -- Pastor Moody had
6 wire-transferred in two installments \$750,000 to the attorney
7 trust account. That is clearly fixed by the on or about
8 instruction. I think we're fine with that.

9 With respect to the rest of the transactions, I think
10 we've got all of the wires that could show the movement of the
11 money, that there is ample evidence here to allow each count to
12 go forward to the jury.

13 All right. Count 28 is the conspiracy to commit
14 money laundering. Now, we've advised the Court that offense
15 only really has two elements. That there was an agreement and
16 that the defendant knowingly joined this agreement. And again,
17 well, there is this substantial overlap between the conspiracy
18 to commit wire fraud and the conspiracy to commit money
19 laundering.

20 The Court is well aware that a single action can
21 implicate multiple criminal statutes. That's essentially what
22 we're talking about here. The wire fraud, which really was the
23 movement of the money. The money laundering would have been
24 the goal and desire of these individuals to perpetuate the
25 scheme to further its purpose, to continue its life. And they

1 needed to do that by establishing that the defendant had some
2 appearance of financial wherewithal, that he was out there
3 working and trying to get all this money and had the status and
4 even the physical location to close these deals. That was part
5 of the veneer that the defendant was trying to present to these
6 investors. So that's regarding the conspiracy.

7 Now, with respect to the substantive charges, the
8 money laundering, Counts 29 through 34, I'll go through the
9 elements.

10 All right. First, the defendant conducted a
11 financial transaction. Second, the financial transaction
12 involved property that represented proceeds of wire fraud.
13 Third, the defendant knew the property involved in the
14 financial transaction represented the proceeds of some form of
15 unlawful activity. Fourth, that the defendant had the intent
16 to promote the carry on of wire fraud.

17 All right. The first element, conducted a financial
18 transaction. Again, the record is filled with information
19 regarding wiring activity. The movement of money. These are
20 all clearly financial transactions. And that is true with
21 respect to each individual count that's listed in 29 through
22 34.

23 Second, the financial transaction involved property
24 that represented the proceeds of wire fraud. Well, the wire
25 fraud was essentially, on a bigger picture, was this investment

1 fraud that we've taken and charged as a particular wire --
2 wiring activity or wire fraud as the actual substantive
3 offense.

4 There's no real question here that the money that was
5 charged with respect to 29 through 34, the ultimate source of
6 all that money was Pastor Alan Moody.

7 The financial transaction, does wiring involve
8 property that represented the proceeds of wire fraud?
9 Pastor Moody was lied to about his investment, the \$750,000.
10 An additional \$750,000. 1.5 million is all proceeds. This is
11 all the profits from his fraud where he's able to finally get
12 somebody -- well, finally able to get Pastor Moody to send
13 another \$1.5 million. That's proceeds. And then he engaged in
14 a financial transaction. What transaction? Took those
15 proceeds, Pastor Moody's money, and then began this doling out
16 process and passing it along with the intent to promote the
17 carry on of the wire fraud.

18 Now, this is why we've got certain transactions that
19 go towards spending under 1957 and promoting versus -- under
20 1956.

21 Look what we charge here in Count 29. The money
22 going to Arron Jepson are funds for Allan Clyde. That's to
23 perpetuate the belief on Allan Clyde's part that this is still
24 possible. That his money is still going to be around the
25 corner, that it's still coming, to again create this belief and

1 this lulling that he can expect the money at some point.

2 Orange County Teachers Federal Credit Union. That
3 was money to pay Ron Featherstone. As we heard the testimony,
4 Ron Featherstone was the luller. He was an individual who was
5 calling these investors and telling them the money is coming,
6 the money is coming. Clearly intended to perpetuate this
7 scheme to defraud.

8 Likewise, Paul Ramsey, again to perpetuate this
9 belief, which apparently was successful, that Mr. Ramsey was
10 still hoping that money could come. That he could recoup his
11 losses instead of losing -- well, with that it would be
12 knocking him down from 2.5 to 2.4 million, and maybe there's
13 more money coming.

14 That's also true with Stephen Williams, with the
15 total amount of money there was \$89,600. But, again, trying to
16 perpetuate this belief and the lulling.

17 More money going to Timothy Oliver, \$30,000. Now,
18 Mr. Oliver had gotten more money than he originally invested,
19 and that decision was being made by Mr. Heshelman.

20 Mr. Mickelson had testified that with respect to
21 Mr. Edwards that there was some belief that it would be a good
22 idea to have some of the early investors actually making money
23 so they might be available to act as a reference, to vouch for
24 the fact that they invested money and they got more.

25 That was true with Mr. Edwards. Now, he didn't

1 participate in the decision here with Mr. Oliver, but again, it
2 makes sense that Mr. Oliver now is in a position to also vouch
3 for the financial success, except for the fact that Mr. Oliver
4 turned out to be involved in a whole nother matter which
5 upended his value as a potential voucher or potential
6 reference. But nonetheless, more money going to Mr. Oliver was
7 again to help to perpetuate the veneer that the defendant has
8 the financial wherewithal to continue with this trading
9 platform.

10 Again, more money going to Arron Jepson for the same
11 reasons, that it would create the impression with Mr. Clyde
12 that this investment was just around corner, was going to
13 mature and provide some stream of income.

14 International money laundering. All right.
15 International money laundering is Counts 35 through 38. First,
16 the defendant transmitted a monetary instrument or funds.
17 Second, the defendant's transmission or transfer was from a
18 place in the United States to or through a place outside of the
19 United States. Third, that the defendant's transmission or
20 transfer of monetary issues or funds was done with the intent
21 to protest the carrying on of the wire fraud.

22 Three elements: Again, transmission of monetary
23 instruments or funds. As listed in the Indictment, we clearly
24 have the wire transfer of monies.

25 That the transmission or transfer was from a place in

1 the United States to or through a place outside the
2 United States.

3 The evidence has come in very clearly that the money
4 started in Michigan, Pastor Moody's money, looped through
5 Florida, and then from Florida was sent overseas. And what we
6 have here is the EMA Hotel, Zurich, Switzerland. Clearly
7 international.

8 The next count, 36, going to the Bank of London.
9 Excuse me, HSBC -- HSBC Bank in London, England. Again
10 overseas. The next transaction is UBS Bank in Zurich. And
11 last, the Athaeneum Hotel. And while the banking was in
12 Manchester, England, I think all the testimony is that the
13 Athaeneum Hotel is in -- and stipulation is that it is in
14 London. Again, that distinction apart, it's still overseas.

15 The question then is: Are these transmissions or
16 transfers of these monetary instruments done with the intent to
17 promote the carrying out of the wire fraud?

18 We've heard lots of testimony here suggesting that
19 the defendant is in Zurich working on a deal, that he's in
20 London going to these financial centers. In New York and going
21 to these financial centers.

22 You know, Your Honor, I skipped over some of the
23 other counts here on the other money laundering. I'll come
24 back to that.

25 Again, what the defendant was doing was sending this

1 money overseas to continue this appearance that he is a
2 financial mover and shaker, that he has the financial ability
3 to do this, and he has the status and the location where he can
4 conduct these financial transactions. And he can represent to
5 people that "I'm in Zurich. I'm working on a deal. I'm in
6 London. I'm meeting with other people." All of this as well
7 as the ability to continue to finance that activity by sending
8 money to HSBC and to UBS Bank so they would give adequate
9 information on that.

10 Your Honor, if I may, with respect to other money
11 laundering, I think I skipped over this on the wire fraud. Or
12 in particular the wire fraud. There are 27 counts. Is it
13 necessary for me to go through all of the facts?

14 *THE COURT:* No, it's not.

15 *MR. MEKARU:* I hope not. Thank you.

16 All right. The last block of charges would be the
17 money laundering counts 36 through -- 39 through 46, excuse me.

18 As the Court is aware, 1957 is essentially the
19 spending of proceeds. It's the spending violation for money
20 laundering. Essentially if you spend more than \$10,000 of
21 dirty money, that you could be charged with a violation of
22 1957.

23 The elements of that are obviously more elegantly
24 stated than I just put it, but let's go through that.

25 First, the defendant knowingly engaged in a monetary

1 transaction. Second, that the monetary transaction was in
2 property derived from wire fraud. Third, that the property had
3 a value greater than \$10,000. Fourth, that the defendant knew
4 that the transaction was intended to provide property. And
5 fifth, that the monetary transaction took place within the
6 United States or that the monetary transaction took place
7 outside the United States, but the defendant is a U.S. citizen.

8 Again, knowingly engaged in a monetary transaction,
9 the first element, it's the wiring of money. The defendant is
10 instructing his lawyer to wire money. That is a monetary
11 transaction. That these wires, these monies involved property
12 derived from wire fraud. Whether this money came from his wire
13 fraud. And that is, again, very similar to what we had with
14 respect to the 1956 charge. The flow of money came from Pastor
15 Alan Moody to the attorney account and then went on. That is
16 all -- each one of these blocks of money represent property or
17 funds derived from this wire fraud.

18 Third, that the property have value greater than
19 \$10,000. Property. We're talking about blocks of money. The
20 block of money that he sent was greater than \$10,000. And
21 that's clearly true when we have wiring of 25, 75, 25, 30,000,
22 30,000, well over the \$10,000 threshold.

23 Fourth, the defendant knew that the transaction was
24 criminally to derive property. He knew that it was, if I may,
25 dirty money. How does he know that? Because he knows the

1 money is coming from Pastor Alan Moody. He's directly involved
2 in this transaction.

3 Fifth, that the monetary transaction took place
4 within the United States or outside of the United States and we
5 have proof that he's a U.S. citizen.

6 So, Your Honor, for all of the domestic transactions,
7 I think they will speak for themselves that we have money being
8 sent to First Bancorp, Investors First Bancorp, Bristol Plaza,
9 and another one to the Bristol Plaza. Those are all domestic.

10 With respect to the international transactions, the
11 EMA House, HSBC, UBS, and Athaeneum Hotel. While those were
12 outside of the United States, we had the deputy come and
13 produce his passport establishing the fact that he's a U.S.
14 citizen.

15 Now, I do realize we have an overlap between 1957
16 transactions and 1956 transactions. And as I suggested to this
17 Court, a single act could take on multiple aspects of the
18 criminal conduct. On one hand he's spending. This lifestyle
19 that he's trying to perpetuate has two functions. One is to
20 create the appearance that he has the financial wherewithal,
21 that he is a mover and shaker. He himself said, "I need more
22 money because I don't want to look like a bum."

23 In 20M, that transcript, he knew that it was
24 important to maintain the appearance of having a financial
25 wherewithal. Number 1. That's the promoting under 1956.

1 1957 -- well, he's also living the life. He's living
2 this high life of living in luxury hotels in Zurich, luxury
3 hotels in New York, luxury hotels in London, spending all sorts
4 of money on restaurants, on flight and travel. This is an
5 individual who was living a lavish lifestyle on the backs of
6 these victims and investors.

7 So these monetary transactions represent, again, two
8 things: Perpetuating his veneer, but also to live the high
9 life. And that's entirely appropriate to have single conduct
10 to implicate two different statutes.

11 So, Your Honor, with respect to Counts 1 through 46,
12 I think we have more than ample evidence to allow all of these
13 counts to go forward and to be presented to the jury for their
14 consideration. The evidence considered in the light most
15 favorable to the government would clearly indicate that this
16 could all be given to the jury for their consideration and
17 final determination. Thank you.

18 **THE COURT:** Thank you, Mr. Mekar. Under Federal
19 Rule of Criminal Procedure 29(a), after the government closes
20 its evidence or after the close of all the evidence, the Court
21 on the defendant's motion must enter a judgment of acquittal for
22 any offense for which the evidence is insufficient to sustain a
23 conviction. And this standard implements the requirement that
24 the prosecution must prove a prima facie case by its own
25 evidence before the defendant must be put to his defense.

1 Now, as indicated by Mr. Mekaru in detail, there are
2 numerous counts in this case which -- some of which bear
3 different elements which must be established by the government
4 through its testimony and witnesses. The first is which -- of
5 which is Count 1, conspiracy to commit wire fraud.

6 And I should point out here that in evaluating a
7 Rule 29 motion, the Court is specifically instructed that it
8 may not weigh credibility so long as the witnesses have not
9 been -- are not so totally incredible as to be insubstantial as
10 a matter of law.

11 So the question is whether the testimony of the
12 government witnesses in this case, if believed, would present
13 evidence sufficient to support a conviction.

14 On Count 1, conspiracy to commit wire fraud, I think
15 pretty clearly that the answer to that is yes. As indicated by
16 the government, the elements of conspiracy to commit wire fraud
17 are relatively straightforward. Two or more persons conspired
18 or agreed. We have two people who testified that there were at
19 least three people who conspired or agreed.

20 Secondly, that the defendant knowingly and willingly
21 participated in the agreement, and both of the witnesses who
22 testified, Mr. Mickelson and Mr. Sherwood, both testified that
23 Mr. Heshelman, the defendant here, willingly involved himself
24 in the agreement and may well have been the moving force behind
25 it.

1 And finally, the third element of the conspiracy to
2 commit a wire fraud is that a member of the conspiracy did one
3 of the overt acts described in the Indictment. The Indictment
4 describes, I believe, nine separate overt acts, and there
5 certainly was plenty of testimony that each of these members of
6 the conspiracy conducted certain overt acts.

7 So with regard to Count 1 of the Indictment,
8 conspiracy to commit wire fraud, the motion for dismissal under
9 Rule 29(a) is denied.

10 Counts 2 through 27 are the substantive charges of
11 wire fraud itself. And again, this is the area in which really
12 the defense makes its only argument, I think, and that is on
13 the intent issue, but I think it's incumbent to discuss the
14 other elements of wire fraud under 18 U.S.C. 1343.

15 It seems pretty clear based on the testimony not only
16 of Mr. Mickelson and Mr. Sherwood but of the alleged victims
17 that there was a scheme to defraud and that both
18 Mr. Mickelson -- particularly Mr. Mickelson but also
19 Mr. Sherwood -- supports a finding that the government has
20 established a prima facie case that the defendant devised or at
21 the very least knowingly participated in the scheme to defraud
22 and that there were material misrepresentations made, and those
23 were actually in several different areas their money would be
24 safe, it could not be moved out of Mr. Warner's trust account
25 without the approval and signature of the people who deposited

1 the money, and that those were clearly material
2 misrepresentations.

3 And the intent to defraud, certainly if all we had
4 was the testimony of Mr. Mickelson, it would be more than
5 enough to establish a prima facie case that the intent was not
6 to invest this money but was to use it for other purposes
7 personal to the defendant and the others involved in the
8 various actions.

9 And finally, the fourth element of the wire fraud is
10 the use, obviously, of wire communications or causing those
11 kinds of communications to be used. And here the money came in
12 via wire, and at the direction of the defendant, Mr. Heshelman,
13 the testimony is that he directed it out of the trust account
14 via wire.

15 Count 28, the conspiracy to commit money laundering.
16 And this is the 19 -- Section 1956(h) count.

17 Again, pretty straightforward. The elements are only
18 two. Two or more persons conspired or agreed. And again we
19 have the testimony of Mr. Mickelson and Mr. Sherwood that there
20 was this agreement to commit the crime of money laundering.
21 And that certainly the defendant, Mr. Heshelman, knowingly and
22 voluntarily joined this conspiracy.

23 So we should go back, I guess. With regard to
24 Counts 2 through 27, the motion under Rule 29 to dismiss is
25 denied. And as to Count 28, it is likewise denied because the

1 government has established a prima facie case.

2 Counts 29 through 34 are the actual money laundering
3 counts. And the elements here include the defendant conducting
4 financial transactions. We have plenty of testimony of moving
5 money across the wire, which includes conducting -- either
6 initiating, concluding, or participating in the movement of
7 these kinds of transactions.

8 Certainly the second element, the financial
9 transaction involved property that represented the proceeds of
10 wire fraud. And clearly this is the money Pastor Moody wired
11 to Mr. Warner's trust account.

12 Knowledge is the third element of the offense. That
13 the defendant knew the property was involved in a financial
14 transaction which represented the proceeds of wire fraud.

15 Clearly the testimony of Mr. Mickelson, Mr. Sherwood
16 in particular, satisfies that element. And that the defendant
17 again had the intent to promote the carrying on of the wire
18 fraud via the activities set forth by Mr. Mekaru in his
19 argument here, which is, I dare say, rather typical for a
20 fraudulent scheme to obtain money and move it around, send some
21 back to some investors, but essentially delaying others so that
22 the money can be spent by the members of the conspiracy. So
23 with regard to Counts 29 to 34, the motion is denied.

24 Counts 35 through 38, international money laundering.
25 Essentially the same kinds of testimony supports the

1 transmittal of a monetary instrument. The money flowed, as we
2 have heard in exquisite detail, from Mr. Moody to Mr. Warner to
3 various places outside the country, including Zurich,
4 Switzerland, and London, England. And that the transmission of
5 the money was done with the intent to promote the carrying on
6 of a wire fraud.

7 The money was transferred without the knowledge or
8 authorization of Mr. Moody, and he was continually told that
9 work was being done, and this served to lead him on to delay
10 his demand for return of his funds. And so with regard to
11 Counts 35 through 38 the motion is denied.

12 Finally, with regard to Counts 39 through 46, money
13 laundering in violation of 18 U.S.C. 1957, there is -- the
14 defendant is charged with spending more than \$10,000 of the
15 proceeds from the wire fraud. And again, the testimony of
16 Mr. Warner, Mr. Mickelson, and Mr. Sherwood clearly establish a
17 prima facie case of the defendant's knowing engagement in money
18 transactions, his instructions to his lawyer to wire the money,
19 that the money involved in this transaction was property
20 derived from a wire fraud. The money which was obtained from
21 Mr. Moody via the fraud. It's clear that there was property
22 greatly in excess of \$10,000.

23 Fourth, the defendant knew that the transaction was
24 criminally derived property. We've heard both Mr. Sherwood and
25 Mr. Mickelson testify that -- particularly Mr. Mickelson --

1 that the transactions were clearly not intended for legitimate
2 purposes. They were fraudulent in their inception and
3 execution.

4 And finally, that the monetary transaction involved
5 the defendant who is a citizen of the United States, which we
6 have clearly established here. So with regard to Counts 39
7 through 46, the motion is respectfully denied.

8 Before we break, I need to simply, at least from my
9 perspective, just go through one more time. I believe we
10 admitted some exhibits today starting with Government 14. It's
11 the first one I have indicated as of today. Government 23.
12 Government 25 and 26. Those are the exhibits that my notes
13 indicate have been admitted today.

14 Does anybody have anything different from that?

15 *MR. MEKARU:* Yes, Your Honor, confirmed.

16 *THE COURT:* Thank you.

17 *MR. TRACY:* We have the same, Your Honor.

18 *THE COURT:* Thank you. Is there anything else we
19 need to cover this afternoon before we adjourn?

20 *MR. TRACY:* Maybe one little point just to flag for
21 tomorrow. If Mr. Heshelman takes the stand, that I'm aware of
22 he only has one prior conviction that goes back to '89 or '90
23 that related to some separate business that was going on back
24 then. It was like an \$1,800 insufficient funds check. I don't
25 believe there's any basis for the government to get into that

1 during the course of cross-examination given the charges here.
2 And if the government plans to go into that, I'd like a chance
3 to speak to the Court about that, whether it's at a morning
4 break or sometime so that we can address that situation.
5 That's just a flag for the Court. So it's not an issue now. I
6 just want to foreshadow it in case it comes up tomorrow.

7 *THE COURT:* Okay. We do have some, if I recall
8 correctly -- let's make sure I have this right. Your trial
9 brief, Mr. Mekaru, does talk about some 404(b) issues. Am I
10 correct?

11 *MR. MEKARU:* Yes, Your Honor, but I don't think we
12 expressly address that matter.

13 *THE COURT:* I'm not even finding it. Did I make that
14 up? Oh, there it is. I did not remember anything in your
15 brief, and it starts at page 19 on 404(b) which is
16 relatively -- I don't believe I remember anything about that,
17 about a NSF check or anything of that nature, Mr. Mekaru.

18 *MR. MEKARU:* No, Your Honor, and it wasn't our
19 intention -- when I traditionally think of 404(b) evidence, I
20 typically think of it in the context of what the government
21 would intend to present as part of its case-in-chief.

22 There have been instances, for example, where
23 knowledge, intent, identity may be at issue where we would want
24 to establish like modus operandi-type evidence --

25 *THE COURT:* Correct.

1 *MR. MEKARU:* -- and we would want that as part of our
2 case-in-chief. We never intended to introduce our
3 case-in-chief evidence regarding Mr. Heshelman's prior
4 conviction, so that's why we didn't brief that.

5 Now, this would -- it would be -- my analysis,
6 Your Honor, at this point would trigger two issues. One would
7 be the possibility of a 404(b) issue as it relates to the
8 defendant as his status as a defendant, but 609 as a witness,
9 and under 609 whether it's proper impeachment for a witness to
10 go into this issue of a prior conviction.

11 Generally speaking, crimes that go to truth or
12 veracity can be, and I haven't looked at it very closely, I'm
13 sorry, but it was my understanding it had to be with respect to
14 a felony conviction, not necessarily a misdemeanor. I don't
15 know. I don't know. As I said, I just haven't looked at it
16 very closely.

17 *THE COURT:* Well, you also have -- for purposes of
18 609 you have the time limit. You said it was 1989?

19 *MR. TRACY:* Correct, Your Honor.

20 *THE COURT:* So even if it was a conviction, I think
21 you may have -- you may run into the 10-year time limit.

22 *MR. MEKARU:* Here we go. Sorry, Your Honor.
23 Generally it is with a felony, but subsection (2), (a)(2),
24 evidence any witness has been convicted of a crime shall be
25 admitted regardless of the punishment if it readily can be

1 determined that establishing the elements of the crime required
2 proof or admission of an act of dishonesty or false statement
3 by the witness, so --

4 *THE COURT:* Now, what are you reading?

5 *MR. MEKARU:* I'm sorry, I'm reading through this very
6 quickly. 609(a)(2).

7 *THE COURT:* Except 609(b) --

8 *MR. MEKARU:* Yes. Yes, Your Honor, I'm sorry. I
9 just wanted to take it incrementally. Because I didn't want to
10 leave you with the misunderstanding that it had to be a felony,
11 and that was my recollection, but if it's a crime of
12 dishonesty, then even a misdemeanor could be appropriate.

13 *THE COURT:* Right.

14 *MR. MEKARU:* But then that's all, obviously, going to
15 be restricted by the time limitation, so I was taking it
16 incrementally.

17 *THE COURT:* Okay.

18 *MR. MEKARU:* Your Honor, it was -- Your Honor, I
19 think we've got ample evidence here, so it wasn't necessarily
20 my intention to raise an issue that was as old as that. But,
21 on the other hand, if the defendant opens the door and makes
22 some sort of declaration about his general honesty, that he
23 would never commit a crime, that this was something that he
24 would never do, that could open the door for us to, I think,
25 introduce this conviction.

1 I'm sure Mr. Tracy will advise his client to avoid
2 that issue, but if that does happen, I think we can approach
3 the Court either at a sidebar or during a break. And to the
4 extent that we're going to go anywhere near that, we will
5 advise the Court first before pursuing it.

6 *MR. TRACY:* I don't plan to open the door.

7 *THE COURT:* I didn't think you did.

8 *MR. TRACY:* Your morning session tomorrow, do you
9 need us to move things off the table?

10 *THE COURT:* No, it's going to be in chambers.

11 *MR. TRACY:* So we can leave things here?

12 *THE COURT:* You can leave things here, and just, if
13 you will, please be in attendance at 8:30. I would really like
14 to get started by quarter-of-nine if we can.

15 *MR. TRACY:* I had no other issues, Your Honor. I
16 just wanted to flag that one.

17 *THE COURT:* That's fine. Anything further,
18 Mr. Mekaru?

19 *MR. MEKARU:* Your Honor, I have spoken with Mr. Boyd.
20 Counsel was gracious enough to permit me to speak to their
21 expert, and I do have some concerns about his testimony.

22 It's my understanding that Mr. Boyd does have some
23 personal knowledge of the defendant and that there may be some
24 testimony that may be offered regarding what Mr. Boyd thought
25 the defendant was doing, what activities he was actually

1 engaged in.

2 *THE COURT:* He had some personal knowledge during the
3 course of the time that these transactions were taking place?

4 *MR. MEKARU:* Yes, Your Honor. Now, it would be my
5 position again that that all is hearsay. I don't want to be in
6 a position again where I'm -- I don't want to sound like I'm
7 trying to conceal anything from the jury, but we have our
8 rules. And so I just want to flag that issue that we may be
9 getting to that area again.

10 *THE COURT:* The question -- one question I had for
11 you, Mr. Mekaru, is whether you intend to dispute or challenge
12 Mr. Boyd's credentials to offer opinion testimony. And I say
13 that -- I don't have any opinion on it.

14 In looking at his CV, it's unusual for opinion
15 witnesses -- the CV is unusual.

16 *MR. MEKARU:* Yes, Your Honor. And I really wasn't
17 able to glean much about his background from his CV. In
18 speaking with him, it sounds like he is knowledgeable in
19 securities trading and in the various markets that are possible
20 and that are out there. So -- and I don't know -- I don't know
21 if this is maybe an area that you may want to voir dire him
22 first outside of the presence of the jury, because this is --
23 Mr. Boyd, as I understand it, does in fact engage in
24 sophisticated trading activity. It's true. And he can
25 describe this idea of doing structured transactions where you

1 already know what the sales price is going to be and you can
2 buy things at a lower price so you know what your guaranteed
3 markup or guaranteed profit is going to be and all of that.

4 Now, I have shown Mr. Boyd the bank records of what
5 actually happened. There's no correlation between what he does
6 and what he knows about and what the defendant did in his bank
7 records. And he'll acknowledge that. He'll say, Yes, these
8 things do exist, but according to the bank records the
9 defendant didn't do anything along these lines at all. He was
10 talking about it, and he knew very little bit about it, but
11 enough to get -- well, apparently enough to get him in trouble
12 I think was almost his words, but not that he had any evidence
13 whatsoever that he was able to do it.

14 Now, I don't know exactly where Mr. Tracy is going.
15 This is clearly his case. I don't know if he's trying to
16 establish some sort of good-faith defense. But there is
17 nothing to -- there's no correlation between the evidence and
18 what's actually been presented and what this individual knows
19 about what Mr. Heshelman is doing and what he does. So . . .

20 *THE COURT:* Well, there may be a fine line there
21 between the jury's prerogative on weighing the testimony and
22 whether the witness has the necessary credentials to properly
23 offer an opinion for the jury to consider. That was really --
24 I don't know the answer to that.

25 *MR. MEKARU:* Well, and I think regarding opinion, I

1 think we've talked about this a little bit. I don't know if
2 this is really -- and I don't know if counsel is going to ask
3 Mr. Boyd. But I don't know if it's in the nature of an opinion
4 or if it's -- it's possible -- or if it's in the nature of just
5 instruction and advising the jury about some of this
6 terminology and what things actually exist and what's out
7 there.

8 But that -- you know, that opinion that he believed
9 what he thought he was doing, that he was actually doing it,
10 that opinion in and of itself is really not appropriate. It's
11 not an appropriate opinion to give this jury. That's for the
12 jury to decide.

13 I mean, all of the rules regarding expert opinions
14 would allow every expert to go walk up to the line but not
15 render their final opinion that the defendant is not guilty by
16 reason of insanity, didn't have the requisite intent. They can
17 talk about the psychosis, they can talk about the fact that
18 this individual may have all those indications of that
19 psychosis, but they can't take the next step and say,
20 Therefore, he's not guilty.

21 Likewise, this witness is not going to be permitted
22 to go through this whole thing and talk about all this trading
23 activity that was going on and seeing everything the defendant
24 was doing and, therefore, he was in good faith trying. That is
25 not permissible. He can't take that away from the jury. That

1 is for the jury to decide. All he can do is instruct the jury.
2 And that's why I have a little question here, and it's along
3 the same lines as the Court's question about his own bases,
4 but -- in terms of foundation for all of this, but really it's
5 relevance to the evidence we have in this case, it's just that
6 some of these things exist, but it doesn't -- there's no proof
7 here that the defendant was actually doing any of them,
8 so . . .

9 *THE COURT:* Well, I guess we'll find out tomorrow,
10 but, again, you know, as I say, I think that the CV that is the
11 Defendant's Proposed Exhibit A is unusual, and whether it --
12 whether he will be able to support giving any kind of an
13 opinion, particularly since there's no evidence in this case of
14 any particular type of investment that was being pursued. At
15 least, I mean, there are some vague references, but nothing
16 specific.

17 *MR. TRACY:* Do you want any comments from me on any
18 of that or not right now? Short ones?

19 *THE COURT:* I'm always interested in hearing from
20 you, Mr. Tracy.

21 *MR. TRACY:* One, the whiteboard was brought in, I
22 believe. Maybe you always have it in here.

23 *THE COURT:* It is.

24 *MR. TRACY:* But Mr. Boyd was planning to use that
25 instructionally. And I think that part of his testimony is not

1 opinion at all. All he's going to talk -- you'll find -- I
2 agree with you, the CV, because he's a little different branch
3 of what he's doing now, is not what I would normally see as a
4 resume. You'll hear about the time he ran Merrill Lynch,
5 literally ran the bond desk. I think he did the same thing at
6 Citibank or Credit Suisse.

7 So I think if the government opts to voir dire, which
8 is fine, the Court and the government would be more than
9 satisfied in terms of what his banking experience has been in
10 the financial arena. He can speak to factually what goes on in
11 terms of the type of trading platforms that at least have been
12 talked about in some manner during the course of the case. So
13 that I don't even think is opinion. It's just him talking
14 about factually what exists in the world.

15 *THE COURT:* I guess that's part of my problem here.
16 I don't know that there has been really any adequately specific
17 testimony about what these trading platforms were.

18 *MR. TRACY:* Well, the government gets to put its case
19 on the way it decides to, and I don't obviously get to put any
20 of that evidence in until the course of --

21 *THE COURT:* Well, but my concern is that Mr. Boyd not
22 make assumptions that aren't based on anything that's in front
23 of the jury already. That he -- I don't think -- I think we're
24 going to have to be wary of making assumptions that
25 Mr. Heshelman was -- unless we hear from somebody who does say,

1 Here's what Mr. Heshelman was doing specifically, I think it's
2 going to be very difficult for Mr. Boyd to render an opinion.

3 *MR. TRACY:* I don't see that as an opinion,
4 Your Honor, I'm sorry. Maybe I just respectfully disagree with
5 that. I think we should be equally wary that the jury goes
6 back and deliberates and is left with the conclusion or some
7 doubt in their mind that these trading platforms don't take
8 place day-in and day-out in the world.

9 *THE COURT:* But when you say "these trading
10 platforms," we don't have any basis on which to evaluate what
11 they were, and he won't either.

12 *MR. TRACY:* Right, but he's going to be talking about
13 how the leveraging happens, exact -- if you have a \$10 million
14 pool of money, how that if you park that at a bank or another
15 institution, that that can give you access to a hundred million
16 or 500 million. How it works. How you have to have a deal in
17 place. All of that I think the jury is completely entitled to
18 hear so that they know that this does exist in the world.
19 Whether or not Mr. Heshelman or others he was working with had
20 the wherewithal to pull it off is another issue, but . . .

21 *THE COURT:* But pull what off? I mean, that's my
22 problem. It's like wandering around in the dark without my
23 glasses on.

24 You know, I mean, all sorts of things are out there,
25 you know. I mean -- and yet I just -- it's difficult for me,

1 and maybe I will be enlightened tomorrow, but it's difficult
2 for me to see how he can testify about a huge universe of
3 investment potentials when there isn't any specifics for him to
4 discuss with regard to Mr. Heshelman.

5 *MR. TRACY:* Well, I guess a couple points on that.
6 One, I think that's why it's helpful that he actually knew
7 Michael a little bit. Didn't know him well, but through an
8 acquaintance in Switzerland was introduced to him. So he had
9 some sort of discussion about the types of things --

10 *THE COURT:* You see, that's where you're going to get
11 into trouble, I think, with your hearsay.

12 *MR. TRACY:* Well, it's not being used for the truth
13 of the matter asserted. It's being as an expert, somebody
14 that's an opinion person that has dealt with these types of
15 transactions. It's not that he's doing it in a vacuum. He has
16 some context, so it's -- addresses the Court's concern. He has
17 some context in terms of which of these transactions. Not that
18 he's saying he knew he verified that something that was
19 happening at UBS was real or not, he has some level of
20 discussion -- it would be like a psychologist or a psychiatrist
21 actually having a chance to evaluate the witness or a defendant
22 rather than just doing something completely in a vacuum. So it
23 takes it away from the Court's concern about some universe of
24 things and narrows it down.

25 Furthermore, I mean, it's not really fair to say that

1 there hasn't been testimony that narrows it down already. And,
2 of course, whether it's Dan speaking to Mike Boyd about this or
3 me, not about testimony in the case but about where testimony
4 may go, we're able to hone him in on something more specific
5 than just a whole broad universe. We have the benefit of what
6 Sherwood and Mickelson have said about what these things are
7 going to involve. We have the benefit of Clyde's testimony
8 about what he understood. And similarly with other investors.
9 So it's not just he might invest in something over in China
10 regarding XYZ. It's a particular type of leveraging or trading
11 platform that Mike Boyd has seen over and over again at
12 different levels, either in this country or at the
13 international level. And he can speak to how it needs to be --
14 how it's done and the types of things you need to have in place
15 to do it effectively. I think that's all he's really trying to
16 do. Which I think the jury should welcome in terms of
17 instructional facts so that they understand and they don't go
18 back to the jury room later saying, Jeez, I think this is just
19 mumbo jumbo that doesn't exist in the world at all. We've
20 heard from somebody that, yes, these things can be pulled off,
21 but here are the levels of steps and difficulty you need to go
22 through to be able to do it effectively. And that's what I
23 think he's really here to explain to them.

24 *THE COURT:* I remain somewhat skeptical. And unless
25 there is some specific testimony or evidence about what

1 Mr. Heshelman was working on, I remain skeptical that Mr. Boyd
2 can verify that it is a valid investment vehicle.

3 *MR. TRACY:* But I'm not asking him to do that. I'm
4 not asking him at all. I'm saying, Do you -- are you aware of
5 situations, Mr. Boyd, where 8 or 9 or \$10 million can be parked
6 at, say, Mellon Bank? And by parking that money there, and the
7 bank having that essentially as collateral, that will allow for
8 a hundred million or \$500 million access to it for purposes of
9 other trades that you're doing. How does that work? What kind
10 of connections do you need to have? And he just walks through
11 the process for the jury. So they are not left with this,
12 Well, you know what, I don't even think that's real. Because
13 they don't know anything -- I doubt any of them know anything
14 about it. I doubt any of them have any experiences with any of
15 it. If it was buying a car, we wouldn't need this witness,
16 because they would have firsthand knowledge most likely, every
17 single one of them, how does that transaction flow.

18 All Boyd is doing is saying, Let me take, you know,
19 trading platform or leverage 101 for you and simplify it in
20 terms that you can understand it, almost like if you were going
21 out to buy a car. And that way they can then have an ability
22 to sort of understand what that world looks like, and they can
23 judge it for themselves in terms of whether Heshelman had deals
24 in the works that might be along those lines, where it fell
25 down, whether it was just a bunch of garbage, whatever the jury

1 decides to deliberate on. But I think they need to have that
2 context, because it's not like a transaction that happens
3 day-in and day-out that they would have any familiarity with.
4 That's all I'm trying to provide for. And I think that's
5 completely fair for them to have.

6 *THE COURT:* Okay. Anything else?

7 *MR. TRACY:* Nothing from me, Your Honor.

8 *MR. MEKARU:* Just two points, Your Honor. You hit it
9 on the head. There's no evidence that anybody was, to use an
10 example, buying a car. If we had evidence of buying a car, we
11 would be talking about buying a car. But we don't have any
12 evidence of what this trading activity is. We're asking
13 somebody else to fill in the blank what they think this
14 defendant was talking about and insert that.

15 And to the extent that we're asked -- that this is
16 being offered for the truth of the matter asserted? That's not
17 true. It is exactly being offered for the truth of the matter
18 asserted, that this is what the defendant said he was trying to
19 do. The only -- that exception to the hearsay rule really puts
20 into context what somebody does next or what they took from it.

21 All he wants to do is to -- Mr. Boyd's trading
22 activity isn't implicated one way or another about what
23 Mr. Heshelman is doing. So he doesn't take this information
24 and then do anything with it. He's just being told that's what
25 he's doing. And that's what he's trying to elicit from this

1 witness. And it is for the purposes of trying to get it in
2 front of the jury to suggest this is the truth of the matter
3 asserted, this is what the defendant was trying to do, and this
4 is what he said he was doing. That's classic hearsay.

5 So on those two points, Your Honor, I would just
6 respond to that. And thank you for your patience.

7 *THE COURT:* Which is wearing thin. Thank you both.
8 I'll see you tomorrow morning.

9 *MR. TRACY:* Okay. Thank you, Your Honor. Have a
10 good evening.

11 *THE COURT:* You too.

12 *THE CLERK:* Everyone rise. Everyone rise, please.
13 This Court stands adjourned.

14 *(Proceeding adjourned at 4:12 p.m.)*

15 * * * * *

16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above-entitled matter.

18
19 Date: August 14, 2009

20
21 **/s/ Glenda Trexler**

22 Glenda Trexler, CSR-1436, RPR, CRR
23
24
25

EXAMINATION INDEX

PAGE

BRIAN EDWARD TURNER

DIRECT EXAMINATION BY MR. MEKARU: 824

CROSS-EXAMINATION BY MR. TRACY: 843

ANTHONY PHILIP LOIACONO

DIRECT EXAMINATION BY MR. MEKARU: 853

CROSS-EXAMINATION BY MR. TRACY: 868

DENNIS R. MICKELSON

DIRECT EXAMINATION BY MR. MEKARU: 872

CROSS-EXAMINATION BY MR. TRACY: 929

REDIRECT EXAMINATION BY MR. MEKARU: 973

RECROSS-EXAMINATION BY MR. TRACY: 979

* * * * *

EXHIBIT INDEX

EXHIBIT

OFFERED ADMITTED

GVT 14	AutoOz, LLC March '01 bank statement	859	859
--------	--------------------------------------	-----	-----

GVT 23	Mickelson Plea Agreement	874	875
--------	--------------------------	-----	-----

GVT 25	Document entitled Payments Made to Bryce Sherwood with the supporting documentation	907	907
--------	---	-----	-----

GVT 26	Documentation of payments from Mickelson to Edwards directly and indirectly	893	893
--------	---	-----	-----